

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2014-011
DCI2014-0004
Edison Beach House CPD Amendment

WHEREAS, Larry Yax, registered agent for First Central Investment Corp., owner of property located at 830 Estero Boulevard, Fort Myers Beach Florida has requested an amendment to the schedule of uses in the Edison Beach House CPD, to allow resort accessory uses; and

WHEREAS, the subject property is located in the Mixed Residential Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the applicant has indicated that the STRAP for the subject property 24-46-23-W3-00400.0010 and the legal description is provided as follows:

Lot 1, Island Shores Unit 1 Subdivision, as recorded in Plat Book 9, Page 24, Public Records of Lee County, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on August 12, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE/DENY** the applicant's request for an amendment to the schedule of uses to allow outdoor display of merchandise and to allow a temporary sign for use during emergencies.

RECOMMENDED FINDINGS AND CONCLUSIONS:

1. *Whether there exists an error or ambiguity which must be corrected.*

The original schedule of uses for the Pink Porpoise CPD (Resolution 97-14) provided for Accessory Uses and Structures, but the minutes of the hearing "clarified that they could not have a jet ski or other commercial use of the beach."
APPROVE/DENY

2. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition has occurred within the Town's parasail and personal watercraft industry, whereby there are 7 existing Parasail Activity Licenses and 11 Personal Watercraft Vendors Licenses. Due to a 500' separation requirements amongst these vendors (unless co-located), there is a lack of available locations that conform to the requirements of Chapter 27 of the Land Development Code. The subject property is a beachfront hotel property, commercially-zoned, and in a conforming location. **APPROVE/DENY**

3. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34. **APPROVE/DENY**

4. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolutions 97-14, 00-12 and 08-48 found the CPD zoning to be in compliance with the Comprehensive Plan. Further, the beachfront portion of the subject property is located in the Environmentally Critical zoning district, in which LDC Sec. 34-652(d)(6) allows "recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape." **APPROVE/DENY**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

Resolutions 97-14, 00-12 and 08-48 found the CPD zoning to be in compliance with all performance and locational standards. **APPROVE/DENY**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard. **APPROVE/DENY**

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

Resolutions 97-14 and 00-12 found the CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources. **APPROVE/DENY**

8. *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 requested amendment would allow resort accessory uses such as parasail and personal watercraft operations. These uses are already in place adjacent to the Crescent Beach Family Park and adjacent to the Fort Myers Beach Pier, and are compatible with the public beach parks. **APPROVE/DENY**

9. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. **APPROVE/DENY**

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*
2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan. **APPROVE/DENY**

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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:

Hank Zuba, Chair	AYE/NAY	Joanne Shamp, Vice Chair	AYE/NAY
Chuck Bodenhafer	AYE/NAY	Al Durrett	AYE/NAY
John Kakatsch	AYE/NAY	Jane Plummer	AYE/NAY
Jim Steele	AYE/NAY		

DULY PASSED AND ADOPTED THIS 12th day of AUGUST, 2014.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development (CPD) Amendment
CASE NUMBER: DCI2014-0004
LPA HEARING DATE: August 12, 2014
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: First Central Investment Corp. (Larry Yax)
Request: To amend the schedule of uses of the Edison Beach House CPD to allow resort accessory uses
Subject property: Lot 1, Island Shores Unit 1 Subdivision, as recorded in Plat Book 9, Page 24, Public Records of Lee County, Florida.
Physical Address: 830 Estero Boulevard
STRAP #: 24-46-23-W3-00400.0010
FLU: Mixed Residential
Zoning: CPD (Resolution 97-14, as amended by Resolution 00-12, Resolution 01-13, and Resolution 08-48)
Current use(s): Edison Beach House hotel

Adjacent zoning and land uses:

North: Residential Multifamily (RM), Mixed Residential FLUM
Royal Beach Club Condominium
South: Community Facilities (CF), Recreation FLUM
Lynn Hall Memorial Park

East: Estero Boulevard, then DOWNTOWN, Pedestrian Commercial
FLUM, Residential - Seasonal Rentals

West: Environmentally Critical (EC), Recreation FLUM
Beach, then Gulf of Mexico

II. BACKGROUND AND ANALYSIS

Background:

The subject property is approximately 40,000 square feet in area, and is developed as the Edison Beach House hotel. The property was originally rezoned from Residential Multiple-Family (RM-2) to Commercial Planned Development (CPD) for redevelopment of the Pink Porpoise in Resolution 97-14 (attached as Exhibit A). The Town Council heard the case and approved the CPD on April 7, 1997 (minutes attached as Exhibit B), after the LPA had heard the case and recommended approval on March 18, 1997 (minutes attached as Exhibit C).

The Edison Beach House is a 24-unit hotel/motel with a caretaker's unit, located just north of Lynn Hall Memorial Park. The building was built in 2000, and has operated as a hotel/motel since that time. On March 13, 2000, Town Council approved Resolution 00-12, attached as Exhibit D, allowing a Special Permit for Consumption on Premises with outdoor seating. The condition of approval was that "alcoholic beverages to be available at office desk from 12 noon to 8 p.m. only, sale limited to guests only and charged to occupied rooms. No bar or pool-side service."

Resolution 01-14 (attached as Exhibit E) was approved for an amendment to the CPD, for a parcel that is no longer owned by the Edison Beach House. The amendment set forth the use of "Parcel B" at 815 Estero Boulevard to be used as a commercial parking lot, with requirements for landscape buffers, park benches, and a perimeter wall.

Resolution 08-48 (attached as Exhibit F) was to rezone to a new CPD, providing for an addition to the hotel structure, including a loft addition to the caretaker's unit, raising the roof by 11 feet, and an expansion of the pool deck. Town Council heard the request on November 3, 2008, and after a lengthy discussion (minutes attached as Exhibit G), approved the proposed changes to the project as a new CPD. At the time of this staff report writing, the pool deck extension and an enlargement of the building along the front façade were the only improvements constructed.

The subject property was previously the site of personal watercraft vendors license #4 in 1996-1997. After the rezoning of the property in 1997, the license was transferred to the vendor's brother at Rebel Watersports. A document listing the location of the parasail and personal watercraft vendors licenses in 1996-1997 and 1997-1998 is attached as Exhibit H.

Analysis:

The subject property is found to be located in two zoning districts. The upland portion, landward of the 1978 Coastal Construction Control Line, is zoned CPD as described above,

and developed with the hotel/motel use. That portion lying seaward of the 1978 CCCL is zoned Environmentally Critical (EC). The zoning district is the pertinent zoning district for the area on the subject property where the use of "resort accessory uses" for parasail and personal watercraft would actually take place. The EC zoning district is described in LDC Sec. 34-652, with a specific set of permitted uses. Sec. 34-652(d) spells out those uses, including boating, fishing, removal of exotic species or pests, hiking and nature study, recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors, along with wildlife management. The recreation activities are further described in subsection (6) as including passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception).

The requested amendment is to allow the use of *Resort Accessory Uses*. Land Development Code Sec. 34-2 defines *Resort accessory use* as "the use of a structure or premises that is customarily incidental and subordinate to a resort. Typical resort accessory uses are: *Amusement device, golf courses, parasailing operations office, personal watercraft operations office, and rental of beach furniture.*" (Parenthetical references to other code sections were removed for ease of reading the definition). The applicant has not indicated any interest in amusement devices, nor golf courses. The resort accessory uses that are sought would include parasail operations office, personal watercraft operations office, and rental of beach furniture.

In the original Pink Porpoise CPD approval, Resolution 97-14, the schedule of uses included "THE PRINCIPAL USE IS HOTEL/MOTEL EFFICIENCY WITH ALL OTHER USES AS ANCILLARY TO HOTEL/MOTEL EFFICIENCY USE". This clearly establishes that hotel/motel is a permitted principal use of the property, but is limited by the condition that they operate as efficiencies. The Town's Land Development Code does not use the term "efficiency" in any section relating to hotel/motel uses, and therefore does not use the term "efficiency" with any listing of accessory uses that might be appropriate with a hotel/motel principal use. The schedule of uses for the rezoning in 2008, Resolution 08-48, did not include the same terminology, but also did not include *resort accessory uses* at that time. To correct this inconsistency, the applicant has requested to add the use to the schedule of uses and allow uses such as parasail, personal watercraft and beach chair vendors on the beachfront portion of the property.

The subject property is situated more than 500 feet away from any existing Parasail Activity License or Personal Watercraft Vendor's License, as currently required by LDC Chapter 27 regulations. According to measurements using the Lee County Property Appraiser's GIS system, the Best Western (684 Estero) location is approximately 730 feet north of the subject property, and the Times Square Bazaar (1010 Estero) location is approximately 750 feet to the south.

The request would not allow for a new parasail or personal watercraft vendor to open up, because the regulations in Chapter 27 have already established a cap on the number of licenses that may be issued by the Town. There are currently 7 parasail activity licenses

and 11 personal watercraft vendor licenses, and the subject property would become available as a conforming location to the separation requirements in Sec. 27-51(a)(1).

Findings and Conclusions:

- a. *Whether there exists an error or ambiguity which must be corrected.*

The original schedule of uses for the Pink Porpoise CPD (Resolution 97-14) provided for Accessory Uses and Structures, but the minutes of the hearing “clarified that they could not have a jet ski or other commercial use of the beach.” No details were provided to substantiate any claim that the jet skis were a trade-off to allow additional development of the subject property.

- b. *Whether there exist changed or changing conditions that make approval of the request appropriate.*

The changed condition has occurred within the Town’s parasail and personal watercraft industry, whereby there are 7 existing Parasail Activity Licenses and 11 Personal Watercraft Vendors Licenses. Due to a 500’ separation requirements amongst these vendors (unless co-located), there is a lack of available locations that conform to the requirements of Chapter 27 of the Land Development Code. The subject property is a beachfront hotel property, commercially-zoned, and in a conforming location.

- c. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34.

- d. *Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses set forth in the Fort Myers Beach Comprehensive Plan.*

Resolutions 97-14, 00-12 and 08-48 found the CPD zoning to be in compliance with the Comprehensive Plan. Further, the beachfront portion of the subject property is located in the Environmentally Critical zoning district, in which LDC Sec. 34-652(d)(6) allows “recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape.”

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

Resolutions 97-14, 00-12 and 08-48 found the CPD zoning to be in compliance with all performance and locational standards.

- f. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along Estero Boulevard.

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

Resolutions 97-14 and 00-12 found the CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources.

- h. *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 requested amendment would allow resort accessory uses such as parasail and personal watercraft operations. These uses are already in place adjacent to the Crescent Beach Family Park and adjacent to the Fort Myers Beach Pier, and are compatible with the public beach parks.

- i. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities.

- j. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*
2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

III. RECOMMENDATION

The requested amendment to the Edison Beach House CPD is limited to an additional use to be added to the schedule of uses. The use of the applicant's beachfront property for the resort accessory uses including parasail activities and/or personal watercraft vendor is

consistent with the locational separation requirement of 500 feet in LDC Sec. 27-51. Other beachfront commercial and hotel/motel properties safely operate parasail and personal watercraft businesses, including properties adjacent to Crescent Beach Family Park and the Fort Myers Beach Pier. For these reasons, staff recommends **APPROVAL** of the request to amend the schedule of uses of the Edison Beach House CPD to allow resort accessory uses.

IV. CONCLUSION

The granting of the requested CPD amendment would allow resort accessory uses such as parasail activities and personal watercraft vendors along the beachfront portion of the subject property. These water-dependent activities take place at other hotels and commercially-zoned properties along the beach, including both sides of Crescent Beach Family Park and next to the Fort Myers Beach Pier. The request will not have a negative impact on surrounding property owners or the general public.

If Town Council finds that the requested CPD amendment is contrary to the public interest or the health, safety, comfort, convenience and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding rezonings, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested CPD amendment.

Staff recommends **APPROVAL** of the requested CPD amendment to allow resort accessory uses, including parasail and personal watercraft, at the Edison Beach House property.

Exhibits:

- A – Resolution 97-14
- B – Town Council Minutes of April 7, 1997
- C – LPA Minutes of March 18, 1997
- D – Resolution 00-12
- E – Resolution 01-14
- F – Resolution 08-48
- G – Town Council Minutes of November 3, 2008
- H – 1996-1997 and 1997-1998 Parasail and Personal Watercraft license locations

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 97- 14

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA
APPROVING / ~~DENYING~~ THE REQUEST FOR REZONING.

WHEREAS, Pink Porpoise Inc., filed a request to rezone from Residential Multiple Family (RM-2) and Commercial (C-1) Districts to Commercial Planned Development (CPD) to permit a maximum of 24 hotel/motel units (Parcel A only), with buildings not to exceed 70 feet in height on Parcel A and 25 feet in height on Parcel B, on 0.91+/- total acres of land (Parcel A has 0.65+1- acre and Parcel B has 0.26 +/- acre); and,

WHEREAS, the subject property is located at 815 and 830 Estero Blvd., Fort Myers Beach, Florida and is described more particularly as:

LEGAL DESCRIPTION: In Section 24, Township 46 South, Range 23 East, Lee County, Florida:

Lot 1 of that certain SUBDIVISION known as ISLAND SHORES, Unit No. 1, 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 9, Page 24, AND;

BEGINNING at the Southeast corner of Lot 9, Block B, of ISLAND SHORES. Unit No. 2. 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 9, Page 25, same being the corner adjacent to Lot 8, and on Estero Boulevard;

THENCE run Northwesterly along the Southern boundary line of said Lot 9, a distance of 10 feet to the POINT OF BEGINNING of the lands herein described.;

THENCE run Northeasterly, parallel to the Easterly boundary line of said Lot 9, a distance of 160 feet more or less, to the Southerly boundary line of Lagoon Street, as dedicated in said plat of ISLAND SHORES Unit No. 2;

THENCE run Southwesterly along the Southerly boundary line of Lagoon Street to the Northern boundary line of Estero Boulevard, as dedicated in said plat of ISLAND SHORES Unit No. 2;

THENCE run Southeasterly along the Northern boundary line of Estero Boulevard a distance of 123.01 feet to the POINT OF BEGINNING of the lands herein described.

The above described property includes all of Lots 10, 11, 12 and the Northwesterly 15 feet of Lot 9, and portions of Lots 13 and 14, all in Block B of ISLAND SHORES Unit No. 2.

Subject to: easements, restrictions and reservations of record.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 24-46-23-04-00000.0010 and 24-46-23-05-0000B.0100; and,

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 18, 1997; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file and the testimony of all interested persons.

WHEREAS, a public hearing was advertised and held on April 7, 1997, before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff and the Local Planning Agency, the documents on file with Lee County, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES / ~~DENIES~~ the request WITH/~~WITHOUT~~ conditions.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval / ~~denial~~ of the requested modification:

- a. There ~~exists~~ / does not exist an error or ambiguity which must be corrected.
- b. There exist / ~~do not exist~~ changed or changing conditions which make approval of the request appropriate.
- c. There is / ~~is not~~ an impact of a proposed change on the intent of the Land Use Code.
- d. The testimony of any applicant supports / ~~does not support~~ the change.
- e. The recommendation of staff supports / ~~does not support~~ the change.
- f. The testimony of the public supports / ~~does not support~~ the change.
- g. The request is / ~~is not~~ consistent with the goals, objectives, policies and intent of the Lee Plan.
- h. The request does / ~~does not~~ meet or exceed all performance and locational standards set forth for the proposed use.
- i. Urban services, as defined in the Lee Plan, will / ~~will not~~ be available and adequate to serve a proposed land use change, when proposing a change to a future urban area category.
- j. The request is / ~~is not~~ consistent with the densities, intensities and general uses set forth in the Lee Plan.
- k. The request will / ~~will not~~ protect, conserve or preserve environmentally critical areas and natural resources.
- l. The request will / ~~will not~~ be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.
- m. The location of the request does not place / ~~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.
- n. The requested use will / ~~will not~~ be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Land Use Code.
- o. The proposed change is / ~~is not~~ to rectify errors on the official zoning map.
- p. The proposed use or mix of uses is / ~~is not~~ appropriate at the subject location;
- q. Sufficient safeguards to the public interest are / ~~are not~~ provided by the recommended conditions to the concept plan or by other applicable regulations; and
- r. All recommended conditions are / ~~are not~~ reasonably related to the impacts on the public's interest created by or expected from the proposed development.

The applicant has / ~~has not~~ proved entitlement by demonstrating compliance with:

- a. The Lee Plan;
- b. The Land Use and Development Regulations; and
- c. Any other applicable town ordinances or codes.

That the Town Council approves / ~~does not approve~~ the Applicant's request for rezoning with the following conditions and deviations;

A. Conditions

1. The development and use of the subject property is to be in substantial compliance with the approved Master Concept Plan entitled "Estero Island Inn (Pink Porpoise Property)" (Job No. 493-0 1 -96, stamped received February 3, 1997) as prepared by Source, Inc., except as may be modified by the conditions herein.

2. Parcel A is limited to the development of 24 hotel/motel units and one caretaker residence. The average size in aggregate of these units will not exceed 550 square feet per unit. Parcel B has no floor area or intensity approved for development.

3. The following uses are permitted:

THE PRINCIPAL USE IS HOTEL/MOTEL EFFICIENCY WITH ALL OTHER USES AS ANCILLARY TO HOTEL/MOTEL EFFICIENCY USE

Parcel A

- Accessory Uses and Structures
- Administrative Offices
- Bed & Breakfast
- Caretaker's Residence
- Consumption on Premises (limited to in/^{guest}room bar only)
- Entrance Gate and Gatehouse
- Essential Services
- Fencer and Walls
- Food and Beverage Service, Limited
- Hotel/Motel (efficiency)
- Parking Lot: Accessory
- Recreational Facilities: Private
- Signs, in accordance with the Land Development Code
- Storage, indoor

Parcel B

- ~~Accessory Use and Structures~~
- ~~Administrative Offices~~
- ~~Entrance Gate and Gatehouse~~
- ~~Essential Services~~
- ~~Fences and Walls~~
- ~~Government Agency (including Town Hall)~~
- ~~Parking Lot: Accessory and Public~~
- ~~Parks, Groups I and II~~
- ~~Signs in accordance with Land Development Code~~

4. Development of the CPD will comply with the following Property Development Regulations:

Parcel A

- Minimum Lot Area and Dimensions: Area: 0.65 acre; Width: 100 feet; Depth: 360 feet
- Minimum Setbacks: Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.); Side: 10.4 feet; Water Body: 50 feet.
- Maximum Lot Coverage: 40%
- Maximum Building Height: 70 feet.

Parcel B

Minimum Lot Area and Dimensions: Area: 0.26 acre; Width: existing (as depicted on the Master Concept Plan); Depth: existing (as depicted on the Master Concept Plan)

Minimum Setbacks: Street: variable according to the functional classification of the street or road (Section 34-2191 et seq.); Side: 0.9 feet (existing only); 10 feet (new construction).

Maximum Lot Coverage: 40%

Maximum Building Height: 25 feet

5. Prior to building permit approval and prior to site design approval, the developer must design Parcel "A" (as delineated on the Master Concept Plan) in such a way that sea turtles and their hatching will be protected from excessive artificial lighting and mechanical raking of the beaches. This design must at a minimum be in accordance with the standards and regulations as set forth in the Town Land Development Code (LDC) Chapter 14, Article I, Division 2. Wildlife and Habitat Protection. Sea Turtles.

6. All use of Parcel B must be discontinued and building removed prior to the approval of a certificate of occupancy for the hotel/motel use on Parcel A. Prior to any use of Parcel B, administrative approval will be processed as a minor administrative amendment in accordance with section 34-380, of the Land Use Code and may be granted by the Town Manager with the approval of the Town LPA and only upon a finding that public health, safety, and welfare will not be adversely affected.

7. This zoning approval does not address the mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions may be required at the time of local development order. This zoning approval must have a zero impact to the Town from FEMA.

8. Approval of this rezoning does not give the Developer the undeniable right to receive any local development order approval that exceeds the Year 2010 overlay use allocation, if such allocation exists, for the applicable district.

9. This development is to comply with Edison Beach House drawing as presented to the council and appropriate overlay guidelines as voluntarily agreed to by the applicant and with all of the requirements of the Town Codes of Fort Myers Beach at the time of local development order approval, except as may be granted by deviation as part of this planned development. The Town Manager is to approve the final design.

B. Deviations as to Parcel A

It is the finding that each item of the following enhances the achievement of the objectives of the planned development; and the general intent of the Land Use Code to protect the public health, safety and welfare will be preserved and promoted:

1. Deviation 1, requests relief from LDC Section 10414 (a) which requires a fifteen (15) foot wide vegetated buffer with an eight foot (8") high fence or wall for commercial projects next to residential developments to eliminate this requirement is hereby approved with condition that the number of plantings required in Section 10-414(a) be provided and that the buffer is a 10.4 foot vegetative buffer in accordance with the LDC requirements.

2. Deviation 2, requests relief from LDC Section 34-1802(5) which provides for a maximum of 550 square feet per unit for each efficiency hotel/motel unit to allow a maximum of 730 square feet with an average floor area not to exceed 550 square feet per unit is hereby approved with condition that the average size of all units in aggregate within this planned development do not exceed 550 square feet per unit.

3. Deviation 3, requests relief from LDC Sections 34-2174 and 34-2175 which require setbacks to be increased by one-half foot for every foot that the building height exceeds 35 feet in height, to allow the building heights and setbacks as proposed in the Property Development

Regulations (10.4 feet side setback in Parcel A) is hereby approved with the condition that the area surrounding the building remains clear to allow emergency personnel and equipment space for working access. Vegetative plantings (see deviation 1) may be clustered to avoid being within this clear area around the building.

4. Deviation 4, is approved to allow under Section 10-285 for the driveway access points to be designated as shown in the Master Concept Plan as a condition of approval of the foregoing deviations, the applicant shall receive administrative approval of a more specific development plan for each affected development area or parcel.

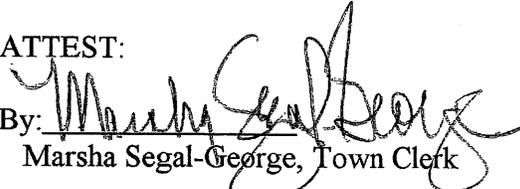
Applications for administrative approval will be processed as administrative amendments in accordance with section 34-380 of the Land Use Code and may be granted by the Town Manager only upon a finding that public health, safety, and welfare will not be adversely affected.

APPLICATION DULY APPROVED / ~~DENIED~~ this 7th Day of April, 1997.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>aye</u>
William (Rusty) Isler	<u>no</u>
Garr Reynolds	<u>no</u>
Ray Murphy	<u>aye</u>

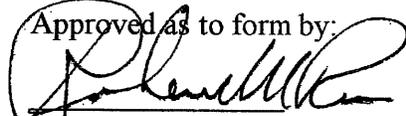
ATTEST:

By: 
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: 
Anita T. Cereceda, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 7, 1997
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The meeting was opened on Monday, April 7, 1997, at 3:00 P.M. by Anita T. Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Pastor Bob Stuckey of First Baptist Church of Ft. Myers Beach.

IV PROCLAMATION ON BEACH ELEMENTARY RECYCLING TEAM

Mayor Cereceda read the proclamation commending the students from Beach Elementary on their recycling efforts. The four children gave a short program on their recycling team.

V PUBLIC COMMENT ON AGENDA ITEMS

A AL VAN HORN

Mr. Van Horn said that at the design workshop, it was the unanimous feeling in his small group that the Town must preserve all the green space they can and provide for recreation. The tennis courts are in constant use and he thinks they should be purchased by the Town so they don't get developed instead.

B BILL DIEHL

Mr. Diehl said they bought on the south end for the convenience of various things including the tennis facility. If they had to travel up to the public courts, of which there are only two, they would be adding to the traffic.

C KAYE DIEHL

Mrs. Diehl is an avid tennis player and has been playing there for years. Even foreign visitors use the facility so it is an asset to the tourist business.

D NICHOLAS GALANTE

Mr. Galante said that Bay Beach Tennis Club is one of the few recreational facilities available in the Town. He asked the Town not to let it go. A park could be put in also.

E ABE LINN

Mr. Linn has been playing tennis here for 16 years. All the other courts are hard painted courts. He would hate to see it lost to development.

F BILL BECK

Mr. Beck invested in the club about 17 years ago. He would like it to stay.

G HOMER ROYER

Mr. Royer has been coming here to play tennis for 15 years and would like the tennis courts to remain.

H TRUDY ROYER

Mrs. Royer asked the Town to save the tennis courts and not build more condos.

I NATALIE LAVIN

Mrs. Lavin has been here 19 years and tennis is a big part of their enjoying the beach. She thanked the Council for considering the proposal.

J MARVIN LAVIN

Mr. Lavin said he would hate to see the courts gone and he will cooperate in any way to help the Town acquire them.

K LOUIS KNIPP

Mr. Knipp said once you give up this facility, you will never get it back. He hopes the Council will look favorably on the proposal because the courts are much needed.

L DORIS STEVENS

Mrs. Stevens asked the Town to keep the courts. Her husband and his friends are much happier when they can play tennis.

M WILMA HOYER

Mrs. Hoyer would like the courts to stay for everyone to enjoy.

N ALBERT STEVENS

Mr. Stevens bought his house here so he could play tennis. There is a big tourist business at the facility too. He hopes the Town or the County can do something to preserve the courts.

O CLARENCE HIRSCH

Mr. Hirsch loves to play tennis and so many people come from all over the world and play tennis here. There is room for a public park too. The more green space the better.

P JACK MARKHAM

Mr. Markham said that there are only two public courts at Bay Oaks, you can hardly get a court, and these courts are easier on the legs. Bay Beach courts are not free and people expect to pay. They are not looking for something for nothing. The courts add a lot to the attractiveness of the island in real estate sales.

Q BILL BUDD

Mr. Budd has been a winter visitor for 15 years. The main reason is so he can play tennis at Bay Beach. He is in his 80's and the courts are easier on his joints.

R JAY BONITZ

Mr. Bonitz represents one of the towing companies that tows on FMB. They have received a lot of negative publicity. He wanted to state that all companies are not heartless. He provides a service for some of the businesses and helps them protect their parking so they can carry on their business. The majority of the cars he tows are not tourists, but are locals. They are not looking to scare tourists away and it is not a scam.

S BRIAN AGID

Mr. Agid said their towing company tries to be as professional as possible, and they want to come to some kind of agreement with the Town.

T DARLENE SIMKINS

Ms. Simkins has a shop on Estero Boulevard and gives the customers an hour or more of free parking then she calls the tow company. There are plenty of warning signs and in addition they tell people verbally that they will be towed if they leave the shopping area. People still park there anyway.

U DEBBIE WILENSKI

Ms. Wilenski owns Caribbean Alley. For the amount of money she pays in rent, she figures she owns the parking lot. They are her spaces and she pays for them. It is the closest one to Times Square. People park in front of her store, look at her sign, and still walk away. She tells people not to park there and they still do. When the lot is full, and there is no one in her shop, she will call the towers. There are no kickbacks. It is her choice whether to tow or not, and no one else's.

V JENNIFER KAESTNER

Ms. Kaestner said she is worried about loitering and cruising on FMB. She is afraid that a towing ordinance is not what the Town should be doing because it is the business of the owners. She does not want to see the parking lots full of people who are walking around and loitering. If they allow free parking, they should be responsible for security and clean-up.

W ROD VAYO

Mr. Vayo was towed a few weeks ago. He and his wife went to dinner and came back to find out that their car was gone. It took them fourteen hours to get their car back. They charged more because it was there so long and they only took cash. He is not trying to force towing companies out of business nor to take rights away from the property owners. But the Town needs to keep them from taking advantage of people.

VI APPROVAL OF MINUTES FROM MARCH 17, 1997 AND MARCH 27, 1997

Motion: Mr. Murphy moved and Mr. Reynolds seconded that both minutes be approved as submitted. The motion passed unanimously.

VII PROCLAMATION ON NATIONAL VOLUNTEER WEEK

Mayor Cereceda read the proclamation expressing appreciation to volunteers who have donated their time to make the community and the nation a more productive place to live. In addition, she read a list of names of persons who have volunteered their services at Town Hall. Barb Coons, executive director of the Volunteer Center, received the proclamation and thanked the Town for participating in National Volunteer Week.

VIII PUBLIC HEARING ON PINK PORPOISE 96-12-018.03Z 01.01

Mr. Roosa reminded the council to disclose any ex parte communications. Mr. Chip Block from Lee County Zoning spoke about the rezoning process. The Pink Porpoise is on Estero Boulevard north of Times Square. Parcel A is on the gulf side has .65 acres, and Parcel B is across Estero and has .26 acres. The LPA recommended approval 9-0 with conditions. He showed a master concept plan. The applicant is proposing no use for Parcel B, but it could be a park, parking, or used by the Town. There would be no residential use. They propose a 24-unit hotel/motel plus a caretaker's apartment on Parcel A. There will be adequate parking. They are requesting four deviations: removal of a requirement for an 8' buffering fence and changing the vegetative buffer to 10.5'; change the size of individual units from a maximum of 550' to a maximum of 730' but keeping the average not to exceed 550'; eliminating the setback requirement that requires an additional .5' for every foot above 35' in height; and allowing the driveway access points as shown on the master plan. The property is Urban Community. Density/Intensity will not be expanded, but instead they are taking the use on two parcels and moving it to one parcel. Any use of Parcel B will have to come back to the Council for approval and the impacts of that use can be considered at that time. It is not intruding commercial use since it is already used that way. The LPA recommended that the building on Parcel B be torn down as soon as the occupational permit is achieved. Mr. Block swore that the foregoing testimony was the truth. Mr. Isler questioned why the two parcels are being considered together and that the density is being increased. He is concerned about the direction the Town is going, and he does not think it is in the public benefit. Mr. FitzSimons expressed concern about whether putting more units in the V-Zone would impact the Town's participation in NFIP.

Motion: Mr. FitzSimons moved that this case be continued until FEMA ramifications could be investigated. Mr. Reynolds seconded the motion. **Discussion:** Since the Town is in review now, he would like to find out if we are clear of any jeopardy before approval. Mr. Gucciardo explained that the Town won't get final approval until 1998. They look at the community as a whole and the decision is based on cumulative scores. He finds it hard to believe that one particular project would make a difference. Rob Fowler, agent for the property owner, was sworn in. He has worked with FEMA for many years and stated that FEMA will step in at the time the building permit is applied for if there is a problem due to V Zone or height. At that time they must satisfy all regulations or they will not be issued a permit. It is not a zoning question. They will be taking buildings that do not comply with FEMA regulations and replacing them with a building that does conform. He offered for the Council to add a condition that it will not affect the Town's rating. Tim Pugh, engineer for the project, was sworn in. He said that parcel A is in both the A zone and the V zone. Currently two of the existing buildings are in the V zone, the rest are in A zone. He has been told that if any part of the building goes into the V zone it must all be built according to the V zone criteria. 11 of the 25 units would be in the V zone. **Action:** Mr. FitzSimons and Mr. Reynolds voted in favor of the motion. Mr. Murphy, Mr. Isler, and Mayor Cereceda voted against the motion. The motion failed.

Mr. FitzSimons questioned whether the Town should allow consumption on premises so that they could sell alcohol in mini-bars in the room. Mr. Reynolds questioned the buffering requirements. He also questioned Mr. Block about whether he would consider this a benefit to the community. He also questioned the traffic impact. Mr. Block said that the level of traffic would not change with this project because the total number of housing units stays the same. However if Parcel B were developed, it might make a change.

The council took a break at 5:10 PM and reconvened at 5:23 PM.

Mr. Roosa pointed out the differences between the LPA resolution and the draft of the resolution presented to the Council. One difference is that parcel B is not to be transferred to the Town and therefore the Town should not require the owner to demolish the building on private property. Since there is no use being approved for Parcel B, in order for them to use it, they would have to apply to be allowed to develop the land according to the uses set out. Parcel B will become CPD zoning.

Mr. Fowler said that he feels this project will be anchoring the overlay zone even though it is not in that zone. The owner originally asked him how much it would cost to refurbish the existing units up to 50% of their value, which is all that is allowed under FEMA. Instead they decided to try something that would improve the aesthetics of the area. He does not want to promote additional impact on the town and this plan is an effort not to increase density. They want to leave parcel B to the community, without telling the Town that it must be used as a parking lot. It could be town hall, administrative office, a park, etc. It could not be any kind of unit that people would live in because that would increase density. Although they are asking for a variance from the side setback, they will actually be decreasing the nonconformity of the side setbacks on the buildings that are already there. They did not want to build another box on pilings with parking underneath. They took their concepts out of the Times Square Overlay Plan which this Council adopted. He feels it would be a shining example of redevelopment. They would be pioneers and hopefully lead others to do so. The owners have lived here 15 years and their kids have gone to school here. They would live in the owner apartment on the top floor. Parking will be paver blocks like are in the overlay zone and they will use the same street lamps. They will have sidewalks to encourage walking. Mr. Reynolds expressed concern over the increase in density and intensity. Mr. Fowler said that it would not increase intensity or density if you make parcel B a park.

Mr. Larry Yax was sworn in. He stated that he and his wife want to live here and make this their retirement home and business. He said the building would not be economically feasible at 17 units and is probably not feasible at 25 units, but they are willing to put out some extra money because they are going to live there too. They have been in the hotel business for many years and they will run this motel correctly. It will be good for the whole beach. He would be willing to keep parcel B and put it in grass and promise never to ask for a use for it.

Mayor Cerededa opened the public hearing.

A DICK CHRISTLIEB

Mr. Christlieb is president of the time share property next door. He would be delighted to have them next door and it would upgrade the area and the whole island.

B BILL WHITAKER

Mr. Whitaker, owner of Dairy Queen, said that the Council and Town need to think positively. What will really be good for the Town? The property as it exists now is a blighted area and we have the opportunity to make it a first-class, well-run, beautiful project. In addition, we will have a piece of vacant land, some green space. This could jump-start the whole area. This is a positive step in the right direction. He reminded them that the LPA has nine members who also represent the whole island, and they voted unanimously to approve.

C LARRY PIERCE

Mr. Pierce is a full-time resident and is the developer of the new Ostego Bay project. This Council has the opportunity to make a positive impact on the community by approving this project.

D A. J. HOLLMAN

Mr. Hollman owns a property on Lagoon Street. He is nervous what the vacant lot will become. He has a small gulf view now and would like not to lose it. He also questioned where it would end. It may not be bad for the island, but it is not what he moved here for.

E MRS. NICELY

Mrs. Nicely lives next door and has had to live with some terrible behavior there. She is very excited about the project. She would like to see the building torn down on parcel B and used for a park or tennis court.

The public hearing was closed.

Mr. Reynolds wanted to state that they should not be voting on how the building looks. They need to look at how the zoning will change the island. He does not think turning this down would be thinking negatively.

Mr. Isler said that he thought the Yaks could not buy parcel B and use the extra money to decrease the building to 17 units which would lower the number of floors. Mr. Yax said he had to buy both pieces as a package.

Mr. Murphy does not feel this would be an increase in density, and that the improvement in the area is sorely needed. He is impressed that the LPA all agreed to approve. He felt that this is what the Council had in mind when they passed the overlay ordinance.

Mr. FitzSimons asked Mr. Yax and Mr. Fowler if it was possible to build tennis courts on Parcel B and have them be operated by Mr. Yax. There is only room for one court and Mr. Yax said he couldn't commit to that without knowing the cost of the tax consequences or the liability consequences on private land. Mr. FitzSimons would like to see expanded conditions: building removed and use of Parcel B as a park only, zero impact to the Town from FEMA, no consumption on premises, and staff approval of final design. (It was clarified that they could not have a jet ski or other commercial use of the beach.)

Mayor Cereceda said that she agrees with Ted's additional conditions except she doesn't mind the mini-bars. Overall she thinks this would be a positive move for the Town.

Motion: Mayor Cereceda moved and Mr. Murphy seconded that the request be approved with the four additional conditions. **Discussion:** Mr. Roosa said they should not consider the transfer of property in the consideration of zoning because it would be contract zoning and would be void. However the property owner could at a later date deed the property to the Town. Mr. Murphy asked if they could have mini-bars but not allow COP as a use. Mr. Roosa said that they could state COP for mini-service bar in the room only, which would not include any kind of bar, cocktail lounge, or service at the pool, etc. **Amended motion:** Mayor Cereceda modified her motion to allow consumption on premises "in guest room only" and Mr. Murphy agreed to the modification. **Action:** Mr. Isler, no; Mr. FitzSimons, yes; Mr. Reynolds, no; Mr. Murphy, yes; Mayor Cereceda, yes. The motion carried.

IX PRESENTATION ON BAY BEACH TENNIS

Dieter Hoyer is concerned about the possible elimination of the Bay Beach Tennis facility by the developers. He presented a written proposal and passed out photographs to show how pretty the area is. It was built in 1976 and has always been open to the public for a fee. The surface of the court is environmentally friendly because rainwater drains through it. The land is now for sale and 48 condo units could be built on that property. He assumes the price would be \$960,000 based on \$20,000 per unit. The only other tennis courts are at Bay Oaks. In comparison, there are 24 courts on Sanibel. It is a wonderful piece of land worthy of saving for future generations. Picnic tables and boat slips could be added and it could become multi-purpose facility. The pro shop is currently run by the tennis pro, salaried by Bay Beach, who also gives lessons. The Town would get money from tennis and other concessions. There are no memberships, but you can buy a weekly or daily rate or monthly rate. The current rate is \$7 per person per hour. He reminded the Council that there is no public land left on the south end. Mr. Reynolds would rather have the Town Manager try to negotiate with Bay Beach to donate the facility to the Town. He said we don't have any money to buy a property like that.

Motion: Mr. Reynolds moved and Mayor Cereceda seconded that the Town Manager be directed to approach the appropriate parties about negotiating for the Town to receive the property. **Discussion:** Marsha Segal-George asked for clarification on whether the Council intends for the owners to transfer the 48 units to another portion of their development. It was decided that the ideal situation would be for them to donate the facility at no cost and to give up the development rights to the 48 units. She said that she has already had some discussions with the management and she does not believe it will be easily negotiated. **Action:** The motion passed unanimously.

The Council took a break at 8:00 PM and reconvened at 8:10 PM.

X UPDATE ON THE LPA BY DAN HUGHES

Mr. Hughes said that on March 4 the LPA had a presentation by Walter Kulash on traffic calming, who suggested a number of things which will be considered in the comprehensive plan. For instance, traffic may be calmer if you narrow a street instead of widening it and put trees nearer the road instead of back in the right of way. Other possible solutions are to narrow the crosswalk areas, put shelters on sides of streets, add angle parking in retail areas, turn streets into one way streets on side streets, and add round-abouts as an alternative to traffic signals. He does not like the continuous left-hand turn lane. He recommends small parking lots in the retail areas instead of one large lot. On March 11 and 18 they had land use hearings for cases that have already been heard by the council. On March 25 they had a meeting with the San Carlos CRA. Of particular interest was the plan to put a dock at the end of Del Mar.

XI UPDATE ON THE CHARTER REVIEW COMMITTEE

The Charter Review committee has completed their job and will proof-read it tomorrow night. The plan is for the revisions to be given to the Council for comments and questions rather than having a workshop.

XII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

Mr. Isler brought a letter from the principal at Beach Elementary and showed pictures regarding the basket ball goals behind the school. He suggested that the assistant town manager approach Bay Oaks to get a quote of commercial grade goals that the town can buy and perhaps have Parks and Rec install. Mr. FitzSimons wanted to make sure that the courts would be accessible to the public and not just used by the school.

B RAY MURPHY

Mr. Murphy had no items to bring before the Council.

C TED FITZSIMONS

Mr. FitzSimons mentioned that there are many citizens at the meeting who are concerned about the back bay and harborage. He felt that it was imperative that the Town come up with a management plan that will include the question of commercial dockage on the Estero Island side.

D GARR REYNOLDS

Mr. Reynolds would like to have the County approve the north end of Bowditch Point to allow people to walk their dogs. It is an area where you cannot get in the water anyway.

He thanked the residents for all their input on Bowditch and he encouraged them to keep up the pressure on the County until it is resolved.

Regarding traffic, he said that they are cruising again on Times Square which is causing traffic problems both going off and coming on the island. He also mentioned the problem of people taking the shortcuts around the traffic on San Carlos Boulevard.

He asked that the Town adopt a plant-a-tree program to beautify the island side streets. He would encourage groups to choose shade trees (from a list of xeriscaping varieties) and buy them through a co-op program. This would be at a minimal cost to the homeowner and no cost to the town.

Motion: Mr. Reynolds moved and Mr. Isler seconded that the Council adopt a "Tree Planting and Beautification Program" and to encourage all homeowners, businesses, land owners, condo owners and all organizations to participate in the planting of at least one tree from a suggested list approved by the State/County Agriculture Agency. **Discussion:** Mr. Isler recommended replanting the island in coconut palms as it used to be. His plan is to negotiate with a nursery on a price including planting. They would come out at once and plant them in the spot where the purchaser wants it. Mayor Cereceda recommended that the Council have a workshop on it or that a committee be organized to make a more formal plan. Mr. FitzSimons recommended concentrating on Estero Boulevard first. It was suggested that we ask Larry Ihnen to put an article in the paper asking for an organization to come forward and help. Mr. Reynolds volunteered to help with the organization. **Action:** Mr. Reynolds, Mr. Isler, and Mr. Murphy voted for the motion. Mr. FitzSimons and Mayor Cereceda were opposed. The motion passed.

E ANITA CERECEDA

Mayor Cereceda expressed concern that the meeting had already lasted over 6 hours. She said it was unfair to the citizens and to the Council. She suggested that perhaps the Council needs to rethink the agenda or add more meetings. Mr. Murphy said that the Council could move more quickly on many of the items. In particular, he said that since they have asked the LPA to hear the land use cases first, then it shouldn't take the Council that long to hear the cases again.

XIII PUBLIC HEARING OF PARKS AND RECREATION ORDINANCE

Mayor Cereceda read the titles and opened the public meeting.

A JACK BRIGHT

Mr. Bright said that it is important to have no dogs on the beach, and Bowditch is certainly not the place. But it is important that dog owners be given an alternative.

The public meeting was closed.

Mr. Roosa clarified that this is the same as the County ordinance. Mr. Isler said this would mean you couldn't have a dog anywhere except in your own yard. Since some of these provisions are a benefit to the Town, Mr. Gucciardo suggested passing the ordinance except deleting section 11 and directing the staff to look into specific laws governing leashes, cleaning up after your animal, etc. Some of these issues may be already covered under the animal control ordinance.

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the ordinance be adopted except for Section 11. **Action:** Mr. Murphy, yes; Mr. Reynolds, no; Mayor Cereceda, yes; Mr. FitzSimons, yes; Mr. Isler, yes. The motion passed.

XIV FIRST READING OF ORDINANCE AMENDING ORDINANCE 96-23 (BUDGET)

Mayor Cereceda read the titles. The ordinance was set for public hearing on April 21.

XV RESOLUTION SUPPORTING REAUTHORIZATION OF ISTE A

Motion: Mr. FitzSimons moved and Mr. Murphy seconded that the resolution be adopted.

Discussion: Mr. Reynolds said that the MPO did not universally agree that ISTE A should be continued because it has been an unfair program for many of the states including Florida. But some changes have been made to address that. **Action:** The motion passed unanimously.

XVI NEW BUSINESS

A SIDE STREET SPEED LIMITS

John Gucciardo said the street committee has passed on the information that there is some interest in changing the speed limit on some side streets. It may not be as simple as deciding what speed you want the street to be and posting a sign. There has to be a study. Since state law is that if speed is not posted, it is 30 mph, he feels that it is probably an enforcement issue, not a posting issue. At this point we have no enforcement. He asked for direction on whether the Council wished the staff to pursue this issue. Mr. Isler questioned how the speed limit got lowered on Estero because he did not believe there was a study done. He feels that having the speed limit so low that people get impatient and pass and run the danger of hitting pedestrians causes a more dangerous situation than having a reasonable limit. The Council decided not to pursue the issue further.

XVII OLD BUSINESS

A TOWING ORDINANCE

Mayor Cereceda reported that during the month of March there were 121 cars towed by Tropic Towing on FMB, 84 of which were from Helmerich Plaza. She sympathizes with the business people who have problems with people parking and leaving, but that means \$16,335 got towed off this island. In addition, there is the bad press, hardship, hassle, etc. Many businesses have come up with a warning system that tells people that the next time they will be towed. She has approached Mr. Helmerich several times and his only suggestion is that the Town build a parking garage. It has been suggested that the Town should issue permits for towing companies so the Town can revoke them when we get too many complaints. Another suggestion is that towing can only be called by the owner of the property, not the tenant, but that is against state statute. Mr. Isler said signs are misleading because they say \$80, but when

you get over there it costs \$120 or more to get your car back. The Council asked Mr. Roosa what the Town could require of the companies and if the Town can set its own fees so they are not prohibitive. Perhaps the Town should look into franchising or a rotation system. Mr. Isler suggested a bond in case someone is towed unfairly they could have a hearing. Now their only recourse is to take it to county court. Mayor Cereceda suggested putting together a group of business people to come together to see if they can resolve it together first. The Council agreed to try that option.

XVIII TOWN MANAGER'S ITEMS

Marsha Segal-George attended the Harbor Board meeting last week. They have agreed to make us the County's alternate on the board, but we can still attend all meetings.

She also spoke about the San Carlos CRA's plan to build a mooring facility in our territorial waters and a plan to extend dockage on Del Mar. She has talked with DEP and the County and many others. Regarding the dock at Del Mar, in order to extend it, it would have to go through a permitting process and would have to receive a submerged land lease from the state, and the Town would have to be the approving body. She thinks it is clear that the Town will have a say on any dock extension at Del Mar. She has told the County that she does not want any permits taken care of administratively. Regarding the mooring facility to dock 24 shrimp boats, it seems clear that it would be within our territorial waters and the Town would have to sign off on the state land lease. Since the plan is to spend CRA dollars on the mooring facility, she has raised the question of whether that money can be spent outside their territory. The Town had put in a grant for joint planning on Matanzas Harbor but it was turned down. The Town still needs to dialog with San Carlos and try to look at some way to harbormaster the area. If we don't find some way to jointly plan for the future, we will constantly be in a battle with San Carlos.

XIX TOWN ATTORNEY'S ITEMS

Mr. Roosa said he has received a response from the Sheriff's department saying that they want a contract in order to enforce our ordinances.

Regarding a DRA to collect revenue, now that we are a charter county, only the county can create DRA's. We will have to get their permission to do it. But when they became a charter county, the CRA for Estero Island was still in existence, therefore the tax money collected still should be there.

XX PUBLIC COMMENT

A LORETTA PORTER

Ms. Porter owns property at Pearl Street next to Del Mar. They used to swim in the back bay, but can no longer because of the pollution. The proposed dockage of shrimp boats will only add more pollution particularly oil. The other problem is drugs. Where shrimp boats are, there are drugs. If shrimp boats come back, so will the drugs including all the unsafe things that have to do with drugs.

B MIKE SOOKLARIS

Mr. Sooklaris lives on Del Mar and recently heard about the dock purchase by Trico Shrimp. It would be crazy to allow more shrimp boats in the back bay. Pollution is incredible, and drugs too. We must stand up and try to put a stop to it or it will put an end to this as a family island.

C JOE WHITE

Mr. White lives on Peal Street and operates the Island Bay Marina. He has 22 boat slips and it is a residential marina. The property is close to the proposed dock. The diesels put out a lot of pollution and it is not compatible to have shrimp boats on this side of the island. Shrimping is an industry, unlike pleasure bloats.

D JACK BRIGHT

Mr. Bright lives on Del Mar. He is concerned, and there are 51 other people here tonight who are very concerned also, about the problem with Trico putting shrimp boats at the end of Del Mar. They say there will be no off-loading and no packing, but what about the future? Having commercial docks on the island will also add traffic to Estero and reduce our quality of life. Tourism is our industry. He also objects to an 800' mooring for 24 boats in the bay. We need to regulate boats moored in the bay because they do not use the pumping facilities on shore. He has also heard there are container ships using the bay. We must put a proactive plan in place and get control now.

E STAN JOHNSON

Mr. Johnson asked the Town to please not allow the back bay to become an industrial park. The Del Mar street dock has been a recreational marina for many years. He lives two houses away and does not need the diesel fumes and particulate matter, which is carcinogenic. Do not allow industrial intrusion in their neighborhood.

F EMMA KOLPECK

Mrs. Kolpeck lives on Mango and one of the nice things is their nice, small beach on the bay. It will be unusable as a beach if shrimp boats are docked there.

G JOHN GEROLA

Mr. Gerola owns a parking lot. He wanted to ask the Council to consider two proposals. First that temporary seasonal parking lots be allowed to operate year round, and second, that they be allowed to use other vacant commercial areas to help take the pressure off of the parking problem. The reason there are problems in Helmerich this year are because Times Square is overwhelmed this year. People are backed up over the bridge. There is no parking available and they see Helmerich first and they are desperate.

H RAY MERTENS

Mr. Mertens lives on the back bay near Del Mar. The language he hears already from the shrimp boats is atrocious and he doesn't need another 24 boats polluting the air and water. He wants to see Ted FitzSimons run again. He proposed selecting a towing company, pay them \$30,000 per year plus \$75 for each car towed (paid by the towed person.) There would be no bonuses.

XXI ADJOURNMENT

Motion: Mr. FitzSimons moved adjournment. The meeting was adjourned at 10:30 PM.

Respectfully submitted,

Peggy Salfen

**FORT MYERS BEACH
LOCAL PLANNING AGENCY MEETING
March 18, 1997
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I CALL TO ORDER

The forty-first meeting of the LPA Committee was opened on Tuesday, March 18, 1997, at 12:00 noon by John Mulholland, Chairman of the Committee. It was determined that there was a quorum with nine members present.

Present at the meeting were: Committee Members Linda Beasley, Johanna Campbell, Lena Heyman, Dan Hughes, Ron Kidder, John Mulholland, Betty Simpson, Roxie Smith and Bill Van Duzer. Also present was Town Manager, Marsha Segal-George.

II INVOCATION AND PLEDGE OF ALLEGIANCE

Chairman John Mulholland gave the invocation and the LPA Committee recited the Pledge of Allegiance to the flag.

III APPROVAL OF MINUTES FROM MARCH 4, 1997

Correction:

On page 4, Item 7, it was not Ron Kidder who asked if there was any more information regarding piers and docks at Bay Beach.

MOTION: Made by Roxie Smith and seconded by Betty Simpson to approve the Minutes of March 4, 1997 with correction noted. Passed unanimously.

IV PUBLIC HEARING PINK PURPOSE, INC.

CASE NO. 96-12-018.03Z01.01

Marsha Segal-George noted that this is our first application license and she thought that rather than have the applicant go first we might prefer for the county staff to go first and explain the situation. This was concurred with. Those giving testimony were sworn in.

John Mulholland stated that this was a request to rezone from multiple family RM-2 in a Commercial C-1 district to Commercial Planned Development (CPD) to permit a maximum of 24 hotel/motel units in Parcel A only with buildings not to exceed 70 feet in height on Parcel A and 25 feet in height on Parcel B, .91 +/- total acres of land. Parcel A has .65 +/- acres and Parcel B has .26 +/- acres. If approved, the master concept plan available for inspection at 1500 Monroe Street in Fort Myers will deviate from certain Town of Fort Myers Beach Land Development Code LDC standards.

A. COUNTY REPRESENTATIVES

1. Chip Block

Mr. Block stated that this is a planned development rezoning wherein the zoning of the existing part of a property would be changed. In this case the change would be to a commercial planned development rezoning. The difference between a planned development and a regular zoning district was explained, as well as the difference between a variance and a deviation. You do not have to have findings to grant a deviation as you would in a variance. What you have to find is (1) that the deviation is

going to enhance the achievement of the planned development; and (2) that the deviation will never impact the public health, safety or welfare.

What the applicant wants to do is put a 24-unit hotel on one part of the property while essentially taking existing residential units on the other part and eliminating those uses at the time that they actually get a certificate of occupancy for the hotel/motel.

Mr. Block pointed out on a zoning map how the subject property entails two separate properties: Parcel A lies to the south of Estero Boulevard and Parcel B lies between Lagoon and Estero. The applicant wants to build the hotel/motel on Parcel A. They are reducing land use on Parcel B. The RM-2 classification is on the southern property while the northern property has a C-1 zoning classification that allows for a wide variety of commercial enterprises. The applicant, however, is seeking to reduce the intensity of use of the northern property down to essentially either public parks, a town hall, parking or some other type of very limited use. The intensity of the project will be entirely on the southern portion south of Estero and before the Gulf of Mexico.

The Master Concept Plan was shown. On Parcel A, besides the hotel/motel there will be a caretaker's residence and parking, including valet parking. The entrance and exit will be separated. Parcel B will have limited services. Storm water management regulations will be adhered to.

Mr. Block advised that county staff has reviewed this request and their report recommends approval with conditions as follows:

- a. Must follow Master Concept Plan
- b. No more than 24 hotel/motel units and a caretaker's residence will be allowed on Parcel A. No square footage or intensity of usage has been approved for Parcel B.
- c. Must adhere to the schedule of uses for both parcels, which include an accessory parking lot, signs and indoor storage for Parcel A and a possibility for a future town hall on Parcel B.
- d. Property development regulations: Parcel A is .65 acres, width is a minimum of 100 feet. and depth 360 ft.; setbacks; maximum lot coverage of only 40% and maximum building height of 70 feet. Parcel B outlines the existing conditions on the subject property along with some minimum setbacks.
- e. Prior to the building permit approval and the site design approval, the developer must design Parcel A in such way that sea turtles and hatchlings will be protected from excessive artificial light.
- f. All residential use of Parcel B would have to be discontinued prior to the approval of the certificate of occupancy.
- g. Although there has been an attempt to address any vehicular or pedestrian activity and traffic impacts, there may be other specific issues that may be raised at the time of the final development order phase. Needed is the ability to address any additional conditions regarding traffic and pedestrian impacts.
- h. Under the comprehensive plan for the town, a 2010 overlay has been established that tells how much commercial square footage is allowed, acreage that is allowed, how much residential and public institutional use is allowed. This condition requires that none of those standards is exceeded and starts at the time of the development order rather than at the zoning stage.
- i. The developer would have to comply with all the requirements of the town codes of Fort Myers Beach at the time of the local development order approval. The only things that would be changed are the three or four deviations that are being recommended for approval.

Mr. Block explained the deviation requests.

- a. Eliminate the required 8-foot high fence or wall but not the required landscaping. Buffering should also be within the 10.4 feet of the side setback.

- b. An average maximum of 550 sq. ft. be allowed for each efficiency hotel unit.
- c. Relief from the LDC requiring setbacks to be increased as the building goes higher.

The applicant is asking that they be set back 10.4 feet instead of 32.5 feet. The area around the building will remain clear for emergency vehicles.

d. Section 10-285 is for connections onto the roadway. They have existing driveway locations that come out either onto Lagoon or come out onto Estero Boulevard and would like these to remain in effect.

Mr. Block stated that he believes that the area is compatible with the surrounding land uses given the intensities and densities that exist there and the fact that there is a commercial zoning district in Parcel B which would allow for very intense commercial activity. To protect the primarily residential street, they would reduce the intensity that is allowed. Approval is recommended.

B. LPA INPUT

Roxie Smith asked regarding the reduction of intensity for Parcel B. Mr. Block explained that the eight units presently on Parcel B will disappear once the certificate of occupancy is obtained, otherwise the building will remain there. Condition 2 will require that any person who wishes to use that property in the future will have to come back and amend the planned development.

Dan Hughes asked regarding a completion date and was told an applicant had five years to seek development approval, after which the planned development zoning expires. What will be on the property is a commercial planned development zoning district but no approved master concept plan and, therefore, no allowable development.

Asked by Mr. Van Duzer if he had been party to the conceptual plan that had been before us, Mr. Block advised that he had been party to the one that was in our packet today. He thinks that the applicants may have some other drawings that they can show us. His concern, Mr. Van Duzer stated, is that if the conceptual plan is approved on Parcel A, that Parcel B would be deeded to the town of Fort Myers Beach. Mr. Block said he, himself, had not conditioned any project in such way that it could be transferred from one owner to another and that only the owner or his representative could advise if this is still part of his plan.

Mr. Block explained that the planned development process does afford the opportunity for a hotel/motel to ask for more units than would normally be expected under a normal construction procedure.

Johanna Campbell noted that the property was originally zoned RM-2 and that a hotel/motel was grandfathered in in 1984. She wished to know if the units were destroyed during a hurricane, if they could be rebuilt. Mr. Block said they could as long as they conformed with all the other regulations.

Dan Hughes advised that on Parcel A they were going from five cottages to 24 units on two-thirds of an acre, which causes him concern. He finds 32 units on one acre to be an extremely high density and would question whether the county is comfortable that this type of density does not place a burden on infrastructure facilities, especially sewer and water. Mr. Block referred him to page 6 of the staff report which indicates there is a total of 17 units on the subject property today. In order to increase the number of units, the applicant will have to get their water and sewer approvals from the appropriate franchise Sewer and Beach plant at the time they apply for a development order. If this approval is not granted, the 24 units will not be approved.

Mr. Block explained that Parcel B will go from C-1 zoning to the commercial planned development zoning if recommended for approval. This is so that all of the limiting conditions can be placed on the parcel along with Parcel A. Otherwise, with a C-1 zoning the property owner is still entitled to land use of their property without conditioning and could come in for any type of land use under the C-1 district that is allowed as long as they conform with the land development code. It was established that planned development pertained to both parcels.

It was confirmed to Johanna Campbell that if the owners wanted to go back to the original RM-2 zoning and put up a condo instead of a hotel, this could be done. But the condo's dwelling units would then be limited based upon the density allowed under the comprehensive plan. This would be less than the number of hotel units that would be allowed, because two efficiency hotel units have been determined to be equal in nature to one dwelling unit.

C. REPORT OF APPLICANT'S REPRESENTATIVE

Mr. Bob Fallon identified himself as the representative for the applicant. His clients are Barry and Beverly Jacks.

The concept for his clients, Mr. Fallon said, is to in one fashion or another turn Parcel B over to the city. Its use has been left open for the town to decide. Regarding density, they have eight apartments on one side of the street and 17 on the other side, totaling 25. They are not talking about increasing density but transferring and leaving for all intents and purposes a piece of property with certain specified permitted uses in the hands of the city to determine what they want to do with it.

From the inception they have considered themselves to be part of the overlay plan as regards Parcel A. The design elements they have used, therefore, have an old southern look. Ideas have been taken from the Edison and Ford homes. They want the front of the property to be pedestrian friendly with a small park-like effect and benches. They want the street lights to match those of the overlay district and trees over 30 feet tall to look as though they've been there for years. They don't want a square or rectangular shaped building but one with a lot of definition to it. Every unit will face the Gulf and be somewhat ornate in the old Georgia/South Carolina tradition with grill work. There would be a few spaces of parking underneath the building but there will be latticework on the front and the design element has been brought down to the ground. A low, decorative wall will pull the building forward like the one in front of the Hemingway house in Key West.

Mr. Fallon feels that this multi-million dollar project is really something with the energy to set the overlay plan into motion. He feels it is a win-win situation because both the city and the applicant benefit.

D. APPLICANT BARRY JACKS

The Jacks family has been coming here for the winter for 15 years and this year came for six months. They expect to be here for a long time.

E. LPA INPUT

Mr. Fallon and Mr. Jacks were asked questions regarding access for emergency vehicles. Mr. Jacks advised he had to submit a landscaping plan and show that sufficient space will be clear for any emergency vehicle.

Johanna Campbell asked if they could go lower in height for the building. Mr. Jacks indicated they wouldn't achieve the architectural design they aimed for if they did.

Other questions put to the applicant and Chip Block elicited the following responses:

a. Our intent is to have a consumption on premises for the mini bar within the room, which is a little refrigerator with a lock on it holding food, candy, crackers, liquor. You are on the honor system when taking things out and you're supposed to list whatever you take and pay for them upon leaving. And the food and beverage does not relate to the consumption on premises but is primarily things like a continental breakfast.

b. There will be daily maid service.

c. Parcel B would have a park open to the public and it could involve recreational facilities.

d. The shareholders are the existing owners of the property.

V PUBLIC COMMENTS

A. GALE SCHMIDT

Mr. Schmidt said he received a notice for the public hearing that indicated that the Town Council would be present at this meeting and he wondered why they were not here. Mr. Mulholland explained that the LPA worked for and reported to the Council and made recommendations to it.

Mr. Schmidt also had a concern that both parcels would be developed with units as Bel Air had been.

Asked what his feelings were about the planned development by Johanna Campbell, Mr. Schmidt said his feelings are that we incorporated this town to prevent the overloading of property and he doesn't feel that this is being accomplished.

B. BILL WHITAKER

Mr. Whitaker said he owned the property on the other side of the park from this project. He is excited about it and feels it would be a strong impetus to some major redevelopment along San Carlos Boulevard and even further. The fact that they are going to tie it into the CRA project is to him equally exciting. He doesn't see how we could lose when we get rid of the deteriorating cottages and the problems they are creating as far as the tenants.

C. A. J. HOLMAN

Would service by garbage trucks be in Parcel A or in Parcel B, Mr. Holman wished to know. He was told everything would be on Parcel A. In that case, Mr. Holman said he would like to see the entrance and exit of Parcel B moved to Estero Boulevard.

D. JOHN TEAL

His concern is what use will be made of Parcel B, Mr. Teal advised. He would hate to see a vacant unit sitting there for an extended period of time. Attorney Segal-George advised that the applicant wants to give it to the town and doesn't want to say what the town can use it for. If the project is approved, then the Town Council could then say what they want to use that parcel for.

Roxie Smith said she shared Mr. Teal's concerns about the building deteriorating on the property. She wished to know if we made the condition that the building had to be torn down, would the owner have to pay for this.

Further LPA Input:

If the project is approved, can the town take title to the property? Mr. Van Duzer wished to know. Mrs. Segal-George advised, yes.

Mrs. Segal-George said she had two issues to raise. One is that there is a mistake in the notice advising that this hearing was before the Town Council today. She would like to comment that whatever happens today, this will go before the Town Council on April 7 starting at 3:00 P.M. Her second issue is with regard to the draft resolution. Copies have been given to the Chairman but they are not complete because this case has so many conditions and deviations in it that she didn't see much point in putting all of them in a draft.

Regarding potential uses of Parcel B, Dan Hughes said that it was his understanding that without further public hearing those potential uses would be limited to those uses set forth in the conditions. It's not wide open any more for commercial. Even if it was transferred to the town, the town itself would be subject to having to hold a public hearing if they wanted to add any other use.

When talking about Parcel B and the permitted uses, Johanna Campbell noted, signs are mentioned in accordance with the Land Development Code. What kind of signs are these? She was told they would be signs related to the use of the property and not billboard signs. Asked for an explanation of accessory uses, she was told that referred to any type of accessory facility that might be needed to support the principal use of the property.

MOTION: Made by Bill Van Duzer and seconded by John Mulholland that the LPA recommend that the Town Council approve the applicant's request for rezoning from an RM-2 to a CPD with the conditions and deviations noted on pages 2-12. Parcel A should be limited to the development of 24 hotel/motel units and one caretaker's unit and should reflect the average square footage of 515 feet per unit. Parcel B would be titled to the town of Fort Myers Beach and the existing structures on that parcel would be removed by the applicant at the discretion of the town. Deviations 1-4 are recommended for approval. Passed unanimously.

Discussion:

Johanna Campbell stated that some cottages on Parcel A will be taken down and she wondered if any of them are historical or could be used by the Historical Society. She was told that this had been looked into and they weren't historical, but it would be to the applicant's advantage to give them away.

Mr. Hughes asked if it was necessary regarding Parcel A to have the language in one of the conditions that all of the uses shall be ancillary to the use of a hotel/motel. He was told that he might feel more comfortable with saying that the principal use must be hotel/motel efficiency and then calling the rest of those uses as ancillary to the principal use of a hotel/motel. This was agreed to.

BREAK

VI UPDATE ON PLANNING WORKSHOP MARCH 22, 1997

Lena Heyman expressed the hope that we noticed that Hussey Realty put out a very nice sign for the workshop. The Eye Site has also been asked to put out a sign. Cheri Smith will do two small signs that will be put on Estero near the Methodist Church. Lena has bought about 300 name tags. Probably 150-200 people will attend. The church's capacity is about 250 with just chairs set up and no tables. An additional speaker at the workshop will be A. J. Bassett who will talk about the history of the Matanzas Pass area. Larry Ihnen will put another article in tomorrow's Beach Observer. Thanks to the Town staff or putting it all together. About six volunteers will meet Friday at noon at the Methodist Church and more are welcome.

VII UPDATE ON SUBCOMMITTEE ASSIGNMENTS

A) BUILDING HEIGHTS -- BILL VAN DUZER

No report.

B) SIGNS -- RON KIDDER

No report.

C) PUBLIC PARTICIPATION -- LENA HEYMAN

Mrs. Heyman advised she had given Peggy a bill for \$8.00 for the name tags. Also, Larry Ihnen had suggested she talk to Morgan regarding the ad and she may give us a break in the price. Mr. Mulholland said he will be promoting the workshop at the Civic Association tonight.

D) BACK BAY/HARBOR -- JOHN MULHOLLAND

Marsha Segal-George advised they have been trying to get Councilman Rusty Isler appointed to the Regional Harbor Board and this should come through.

The WCIND has agreed to give them \$6,000 for enforcement on the water by off-duty sheriff deputies starting April 1. Enforcement will be for April through July, then again in October. The WCIND has also authorized \$10,000 to start a study of the shrimping industry.

A new program called Waterfront Florida is the Main Street program on the water. They will submit a grant and there is a 4-1 match required on that. Mrs. Segal-George will put up the 2-1/2 million for the CRA project and the match would perhaps be \$350,000. She will ask to continue the CRA project

between Snug Harbor and Matanzas. It is also her understanding that San Carlos Island is also applying and will be asking for a \$35,000 match from the county.

E) TAC/MPO -- DAN HUGHES

No report.

F) BEACHES -- ROXIE SMITH

Mrs. Smith referred us to the article in this morning's paper. Regarding obtaining funds, Attorney Segal-George said that the key here is the state and that the state will only help on a project that is basically on the federal list. Assuming that the state has money, we should be able to get a large state match.

G) SAN CARLOS CRA -- JOHANNA CAMPBELL

Mrs. Campbell reported that a CRA meeting was held last week. She would encourage us to ask the Semmers to come and do a presentation on mooring facilities. Being used will be about 25% of the federal channel. We can discuss if this will have an impact on us.

Attorney Segal-George said her concern has been that we need to have a dialogue so that we can try and work toward a balance of competing interests, both commercial and noncommercial. She was told that the CRA didn't really want an open dialogue but she feels we should keep trying to force a dialogue. Mr. Mulholland said he agreed because we should be involved.

Dan Hughes asked why couldn't we adopt an amendment to our zoning ordinance that would define permitted uses in a marina and limitations. He was told that we could but we couldn't make it retroactive. Also, we could change the zoning but the marina where the shrimp boats tie up have a legal nonconforming use.

H) STEERING COMMITTEE -- MOUND HOUSE -- BETTY SIMPSON

Mrs. Simpson asked Marsha Segal-George if the large tree in front of the house had ever been identified and was told that they didn't yet know.

VIII NEW BUSINESS; LPA MEMBER ITEMS

Mr. Mulholland said he'd like to propose to the LPA that we start looking into a restriction on liquor licenses on the island. Mrs. Segal-George noted that there are many classifications of liquor licenses. One of the problems we have is the regulations that we have in the code with regards to liquor licenses. There are also a lot of different groupings. It's a complicated subject with issues that would require a lot of investigation and we don't have the resources right now to study it. Johanna feels we need to start now and that she would be willing to work on it. Dan Hughes doesn't feel that the issue of liquor licenses is within our jurisdiction unless it's corollary to some zoning issue. Mr. Mulholland advised that he understands that the Town Council approved Ganim with conditions, one of which was that every six months the applicant must come to the town and prove that 51% or more of their business is coming from the restaurant. If we have questions or concerns in the future on cases, maybe we should think about attaching conditions.

Linda Beasley asked for our plans on March 25 when we have an open agenda.

Ron Kidder reminded us that he had made a motion sometime back that we would let the people who had rentals on the beach know by April 15 what they could do with their mother-in-law apartments and we haven't done anything on it. Bill Van Duzer advised that we had. Bill Spikowski will offer something on the 22nd of this month regarding size and restrictions that people can respond to before April 15. Ron feels that the LPA should also address the issue aside from Mr. Spikowski's recommendations.

Johanna Campbell brought up the issue of accepting letters at hearings. Her concern is for short-term residents who can't come down from their northern homes for hearings. Dan Hughes said he feels we have to deal with letters on an individual basis and they are all included in the record. Johanna

is also concerned about the notices of public hearing which no longer say that an individual can send a letter or appear in person. We should add sending letters to our notices again she feels.

Mrs. Segal-George advised that to change the regulation that notices be sent just to a condominium association office will require a zoning amendment. There is no rule requiring that individual owners should each receive notices right now. This would also entail an additional expense.

Mrs. Segal-George advised that at last night's Council meeting, Gullwing was approved 4-1; Ganim was approved 4-1 with the 51% food requirement. The deck was approved 3-2 and was allowed along with the original deck.

Lena Heyman noted that April has five Tuesdays and the first Tuesday is April 1. It is also the week that kids are out of school for Easter Week. She asks that we not have a meeting on the first of the month.

Betty Simpson noted she had told us that the Estero Bay Agency on Bay Management was formed. She serves on this committee and they are having their first meeting on Monday afternoon, which will be on the state of the bay. During the first year they are going to have a work plan to create an outline for the state of the bay.

IX ADJOURNMENT

Chairman Mulholland adjourned the meeting at 3:16 P.M.

Respectfully submitted,

Lorraine Calhoun
Recording Secretary

IV APPROVAL OF MINUTES FROM MARCH 18, 1997

Corrections:

1. On page 4 Bob Fallon's name should be changed to read Rob Fowler. Also, clients Barry and Beverly Jacks' name should be changed to Yax.
2. On page 1, Item IV, change Pink Purpoise to Pink Porpoise and also change "this is is our first application license" to read "this is our first application for a CPD."
3. On page 8, paragraph 2 where it reads "The deck was approved 3-2 and was allowed along with the original deck." for clarification, show that the deck was allowed as constructed, being 2.5 feet from the side yard.

MOTION: Made by Roxie Smith and seconded by Lena Heyman to approve the minutes with the corrections noted. Passed unanimously.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 00- 12

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA
APPROVING / ~~DENYING~~ THE REQUEST FOR SPECIAL PERMIT FOR
CONSUMPTION ON PREMISES WITH OUTDOOR SEATING

WHEREAS, First Central Inv., Corp., as owner of the Edison Beach House has filed an application for a Special Permit in the CPD (Commercial Planned District) district for consumption on premises with outdoor seating; and,

WHEREAS, the subject property is located at 830 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as: Section 24, Township 46 South, Range 23 East: and,

WHEREAS, the applicant has indicated the property's current STRAP number are: 24-46-23-W3-00400.0010; and,

WHEREAS, a public hearing was advertised and held before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff and the Local Planning Agency, the documents on file with Lee County, and the testimony of all interested persons; and,

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES / ~~DENIES~~ the requested modification.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval / ~~denial~~ of the requested modification:

1. The applicant did / ~~did not~~ comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is ~~no~~ error or ambiguity in the Land Development Code of Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate/ ~~inappropriate~~.

4. That the Special Permit, as conditioned, is consistent/ ~~inconsistent~~ with the goals, objectives, policies and intent of the Lee Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
5. That the Special Permit, as conditioned, meets / ~~does not meet~~ all performance and locational standards set forth for the proposed use.
6. That urban services will / ~~will not~~ be available and adequate to serve the proposed use when it is constructed.
7. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

Alcoholic beverages to be available at office desk from 12 noon to 8 p.m. only, sale limited to guests only and charged to occupied rooms. No bar or pool-side service.

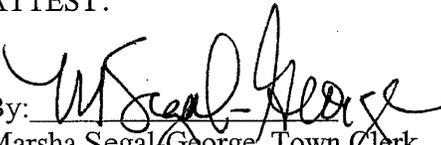
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

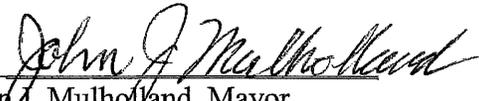
Anita T. Cereceda	aye
Daniel Hughes	aye
John Mulholland	nay
Garr Reynolds	nay
Ray Murphy	aye

APPLICATION DULY DENIED/GRANTED this 13th day of March, 2000.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
 Marsha Segal-George, Town Clerk

By: 
 John J. Mulholland, Mayor

Approved as to form by:


 Richard V.S. Roosa, Town Attorney

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 01- 14

WHEREAS, First Central Invest. Corp., in ref. to Edison Beach House has requested to amend the existing CPD to Parcel "B" by amending Condition 6 of Resolution #97-14 to modify the date upon which the existing structure must be removed and adopt a new Master Concept plan to allow the development of a parking lot and supporting structures on this parcel; and,

WHEREAS, the subject property is located at 815 Estero Blvd., Fort Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-0050B.0100; and,

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on May 8, when they recommended that the Town Council approve the applicant's request to amend the existing CPD to add the use of Parking Lot Commercial as a permitted use but offers that the parking lot must be clearly designated and used as a public parking lot that provides overflow parking for the Edison Beach House and would also then offer the following Conditions;

1. Condition 1 of Resolution #97-14 is hereby amended to include a new Master concept Plan. The development of this project must now be consistent with the one-page Master concept Plan entitled "Edison Beach House", stamped received APR 19, 2001, last revised 4/17/01, except as modified by the conditions below. This development must comply with all requirements of the Town's LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. Condition 3 of Resolution #97-14 is hereby amended to add the following use to Parcel B of this planned development and maintaining the originally approved use of Parks, Groups I and II.
PARKING LOT, Commercial - No other change is hereby granted to approved Schedule of Uses.
3. The Master Concept Plan must be revised to provide that the parking lot does not cover more than 67 percent of the overall size of the parcel which includes the area inside the wall.
4. At least 4 park benches must be provided outside of the wall of the parking lot creating a more park like atmosphere around the parking lot.
5. Not less than 6 large shade trees must be planted inside of and outside of the parking lot area to provide shade both for patrons of the parking lot and for those using the park benches. Streetscaping along Estero Boulevard and Lagoon Street must be provided. The landscaping and streetscaping must be approved by the Town Manager prior to the approval of a local development order.
6. Parking lot design must include the parking lot designs, specifically the use of pervious surfacing, from the Town's 1999 Santos/Palermo Circle Planning Study.

7. Surround the parking lot with a low perimeter wall of 40 inches in height to keep headlights from shining on the adjacent residential properties, similar to the Santos/Palermo Circle Study. Any lighting within the parking lot must be no higher than 36 inches in height with all lighting directed inward to the site and shielded to prevent light from shining onto adjacent properties. Lighting is also subject to all other LDC requirements.
8. Signage for this parking area is limited to one sign not to exceed 16 square feet and not exceeding 36 inches in height.
9. All vehicular visibility entering and leaving the site must be maintained to protect the health and safety of the traveling public and pedestrian traffic along Estero Blvd.
10. Deviation 1 of Resolution #87-14 is amended by this action. This deviation reduces the required 15 foot wide buffer on Parcel B to allow a 40 inch wall to be constructed on the entire perimeter of Parcel B except for ingress and egress on Estero Blvd. as depicted on the approved Master Concept Plan.
11. The 2 parking spaces that are shown to the right of the entrance on the applicant's sight plan are to be shortened and marked compact cars only and additional shrubs are to be planted in front of these spaces to provide the maximum buffer possible as between the property and the adjacent landowner to the south.
12. The signage designated in condition #8 will state that Public Parking is allowed.

This recommendation of approval also includes the 2 Deviations found on Page 3 of the Staff Report dated May 1, 2001 and attached hereto and incorporated herein by reference.

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Town Plan.
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.

- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED/DENIED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

SEE ATTACHED

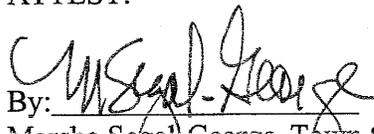
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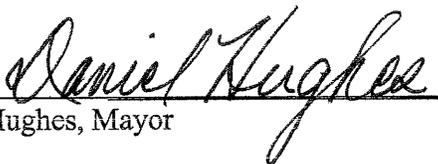
Dan Hughes	yes
Garr Reynolds	no
Ray Murphy	yes
Terry Cain	yes
Howard Rynearson	yes

APPLICATION DULY GRANTED/DENIED this 4th day of June, 2001.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
 Marsha Segal-George, Town Clerk

By: 
 Dan Hughes, Mayor

Approved as to form by:


 Richard V.S. Roosa, Town Attorney

ATTACHMENT

1. Condition 1 of Resolution #97-14 is hereby amended to include a new Master concept Plan. The development of this project must now be consistent with the one-page Master concept Plan entitled "Edison Beach House", stamped received APR 19, 2001, last revised 4/17/01, except as modified by the conditions below. This development must comply with all requirements of the Town's LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. Condition 3 of Resolution #97-14 is hereby amended to add the following use to Parcel B of this planned development and maintaining the originally approved use of Parks, Groups I and II.

PARKING LOT, Commercial - No other change is hereby granted to approved Schedule of Uses.
3. The Master Concept Plan must be revised to provide that the parking lot does not cover more than 67 percent of the overall size of the parcel which includes the area inside the wall.
4. At least 4 park benches must be provided outside of the wall of the parking lot creating a more park like atmosphere around the parking lot.
5. Not less than 6 large shade trees must be planted inside of and outside of the parking lot area to provide shade both for patrons of the parking lot and for those using the park benches. Streetscaping along Estero Boulevard and Lagoon Street must be provided. The landscaping and streetscaping must be approved by the Town Manager prior to the approval of a local development order.
6. Parking lot design must include the parking lot designs, specifically the use of pervious surfacing, from the Town's 1999 Santos/Palermo Circle Planning Study.
7. Surround the parking lot with a low perimeter wall of 40 inches in height to keep headlights from shining on the adjacent residential properties, similar to the Santos/Palermo Circle Study. Any lighting within the parking lot must be no higher than 36 inches in height with all lighting directed inward to the site and shielded to prevent light from shining onto adjacent properties. Lighting is also subject to all other LDC requirements.
8. Signage for this parking area is limited to one sign not to exceed 16 square feet and not exceeding 36 inches in height.

9. All vehicular visibility entering and leaving the site must be maintained to protect the health and safety of the traveling public and pedestrian traffic along Estero Blvd.
10. Deviation 1 of Resolution #87-14 is amended by this action. This deviation reduces the required 15 foot wide buffer on Parcel B to allow a 40 inch wall on the entire perimeter of Parcel B excluding the ingress and egress.
11. The 2 parking spaces that are shown to the right of the entrance on the applicant's sight plan are to be shortened and marked compact cars only and additional shrubs are to be planted in front of these spaces to provide the maximum buffer possible as between the property and the adjacent landowner to the south.
12. The signage designated in condition #8 will state that Public Parking is allowed.

And

Deviation 5 for relief from LDC Section 34-935(c)(2) which requires parking not to be closer to the development perimeter than 25 feet; to allow the pavement for the parking lot to be no less than 1 foot as shown on the approved Master concept Plan is APPROVED provided the developer adjust the Master Concept Plan as conditioned above increasing the setback to the maximum extent possible to increase the separation from the adjoining residential uses.

Deviation 6 for relief from LDC Section 10-415(b)(1) which requires landscape strips be no less than 10 feet wide adjacent to rights-of-way; to eliminate this requirement and in place of this requirement provide a 40 inch wall around the entire perimeter of the property excluding the ingress and egress is APPROVED.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 08-48

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

WHEREAS, First Central Investment Corporation, through its registered agent Lawrence A. Yax ("Applicant"), has requested to rezone 0.51 acres from Commercial Planned Development (CPD) to a new Commercial Planned Development (CPD) to alter the boundaries of the current Edison Beach House CPD zoning district, to allow further development of the subject property, and to allow deviations for additional height and intensity as depicted on its new Master Concept Plan; and

WHEREAS, the subject property is located at 830 Estero Boulevard, Fort Myers Beach, Lee County, Florida; and

WHEREAS, the applicant's original zoning to CPD was approved by Town Resolution 97-14, and subsequently amended by Town Resolution 01-14; and

WHEREAS, the Applicant has indicated the property's current STRAP number is: 24-46-23-W3-00400.0010, with the legal description attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 3, 2008, at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file and the testimony of all interested persons, and recommended Town Council approval of Applicant's request to rezone its CPD to a new CPD subject to five conditions and no deviations as set forth more fully in LPA Resolution Number 2008-22; and

WHEREAS, a public hearing was legally advertised and held before the Town Council of the Town of Fort Myers Beach, Florida on November 3, 2008, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA minutes and LPA Resolution Number 2008-22, the other documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES** the Applicant's request to rezone its CPD to a new CPD subject to the **five (5) conditions** and **two deviations** set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the one-page Master Concept Plan stamped "Received February 22, 2008" for case FMBDC12007-0002, attached as Exhibit "B", except as modified by conditions below. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. Schedule of Uses

Residential:

Dwelling Unit, Caretaker (one unit, existing only)
Residential Accessory Uses
Recreation facilities, private on-site

Lodging:

Hotel/Motel (24 units, existing only)
Consumption on Premises (limited to in-guestroom bar only)
Consumption on Premises as set forth in Town Council Resolution 00-12
(which is attached as Exhibit "C")
Food and Beverage Service, Limited

Office:

Administrative Office (accessory)
Home Occupation (no outside help)

Civic:

Beach access
Essential services
Essential service equipment

b. Site Development Regulations

Minimum Lot Width:	100± feet
Minimum Lot Depth:	324± feet
Minimum Lot Area:	0.51± acres (not including beach)
Maximum Floor Area:	16,867 square feet
Maximum Building Height:	45.7 feet above base flood elevation as defined by LDC Section 34-631 6 stories (5 stories over parking and entry)

Setbacks:

Street:	100± feet
Side:	9.7 feet (existing)
Gulf of Mexico:	50 feet

3. That portion of the subject property located seaward of the Coastal Construction Setback Line recorded in Plat Book 31 of the Public Records of Lee County, Florida, is zoned EC (Environmentally Critical) and is not hereby rezoned. No development within the EC zoning district is authorized by this rezoning.

4. Any point sources of effluent discharge from the subject property onto the beach must be eliminated immediately in accordance with LDC Section 6-13.

5. Approval of this zoning request does not give the developer an undeniable right to receive Local Development Order Approval in the form of a floodplain development permit or other permit. Development Order approvals must satisfy the requirements of the Fort Myers Beach Comprehensive Plan. Development of the subject property must

comply with all requirements of the LDC at the time of Local Development Order Approval except such deviations as may be granted by approval of this planned development. Additional mitigation of traffic impacts may be required for Local Development Order Approval.

Deviations

1. The applicant has requested a deviation from LDC Section 34-3234(b)(3), which limits the enlargement and/or replacement of nonconforming buildings. The deviation would allow expansion of a building that is currently nonconforming with regard to the number of guest units permitted by the Fort Myers Beach Comprehensive Plan, to allow an increase in the total interior square footage of the guest units and an increase in square footage of the caretaker's dwelling unit. The total increase in interior area would be 2,900 square feet. The Town Council **approves** the request for deviation #1.
2. The applicant has requested a deviation from LDC Section 34-3234(a)(3), which limits the enlargement of nonconforming buildings, to allow enlargement of a building that is currently nonconforming with regard to the height allowed by Comp Plan Policy 4-C-4, and LDC Section 34-953 and Table 34-3. The proposed enlargement would increase the height of the building by eleven (11) feet and would create an additional story of height for a total height of 45.7 feet and six (6) stories. The Town Council **approves** the request for deviation #2.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. The requested CPD zoning district, as conditioned, **is consistent with and complies** with all specific requirements, goals objectives, policies and intent and with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Plan, Land Development Code Chapter 34 and all other applicable town ordinances or codes that are relevant to the requested planned development;
2. There **is** an error or ambiguity which must be corrected;
3. There **exist** changed or changing conditions which make approval of the request, as conditioned, appropriate.
4. The proposed use or mix of uses, as conditioned, **is appropriate** at the subject location;
5. Sufficient safeguards to the public interest **are provided** by the conditions to the master concept plan or by other applicable regulations;

6. All conditions **are reasonably related** to the impacts on the public's interest created by or expected from the proposed development;
7. The proposed use or mix of uses, as conditioned, **meets** all performance and locational standards set forth for the proposed use.
8. Regarding the requested deviations (#1 and #2):
 - a. Each Deviation **does enhance** the achievement of the objectives of the planned development;
 - b. Through each Deviation the general intent of Land Development Code Chapter 34 to protect the public health, safety, and welfare **will be** preserved and promoted;
 - c. Each Deviation **does operate** to the benefit, and **may not operate** to the detriment, of the public interest; and
 - d. Each Deviation **is consistent** with the Fort Myers Beach Comprehensive Plan.

UPON MOTION BY VICE MAYOR HERB ACKEN AND SECOND BY JO LIST, THE ABOVE RESOLUTION WAS DULY PASSED AND ADOPTED ON THIS 3RD DAY OF NOVEMBER, 2008.

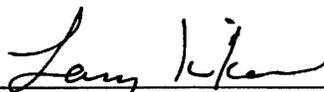
Larry Kiker, Mayor aye
 Tom Babcock, Councilmember nay
 Bob Raymond, Councilmember nay

Herb Acken, Vice Mayor aye
 Jo List, Councilmember aye

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
 Michelle Mayher, Town Clerk

By: 
 Larry Kiker, Mayor

Approved as to legal sufficiency by:

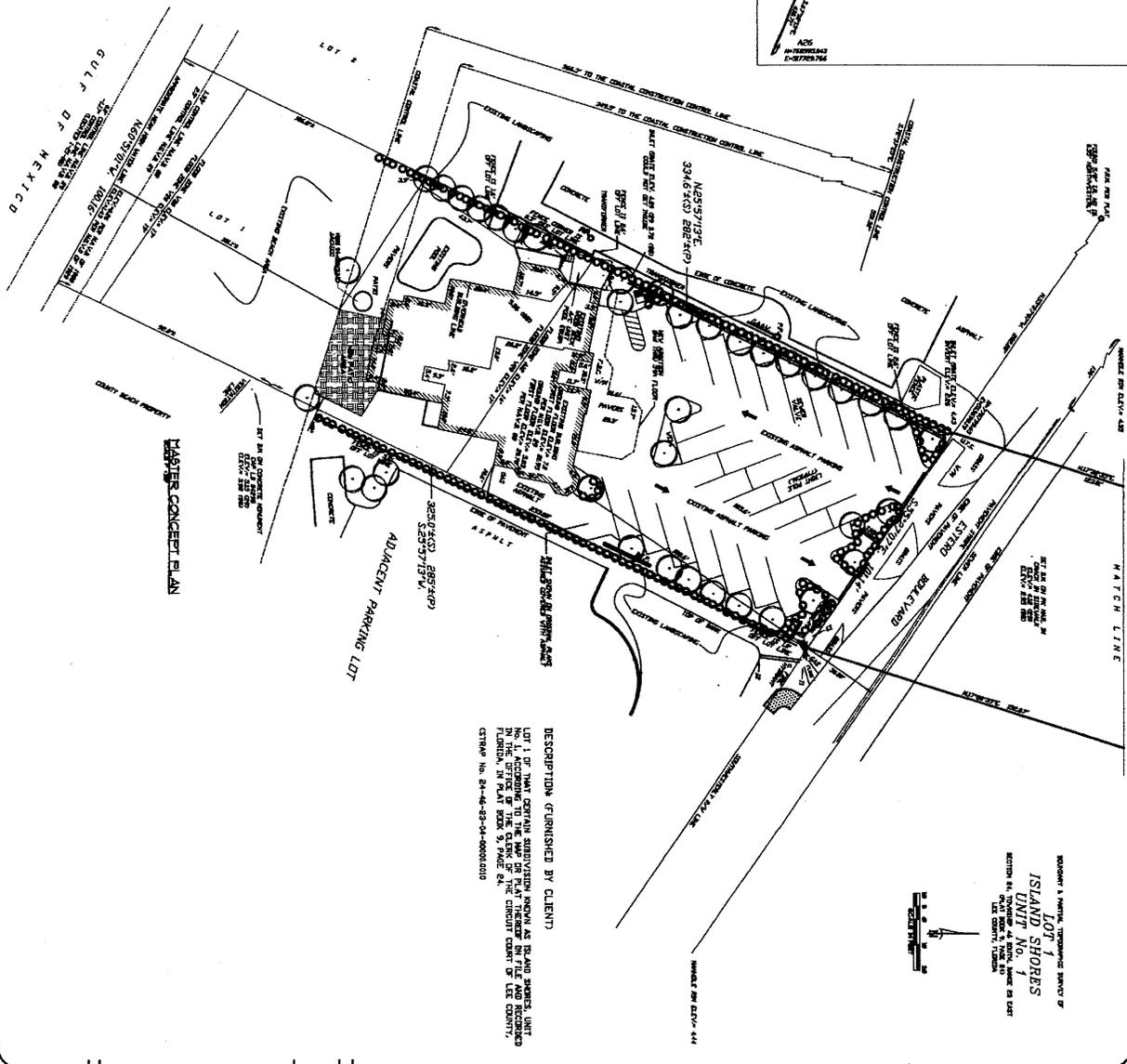
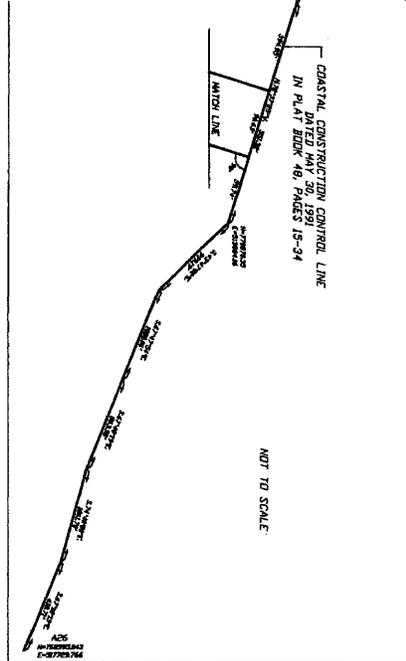
By: 
 Annie Dalton, Town Attorney

Exhibit A
FMBDCI2007-0002

Legal Description

LOT 1, ISLAND SHORES UNIT 1 SUBDIVISION, AS RECORDED IN PLAT
BOOK 9, PAGE 24, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

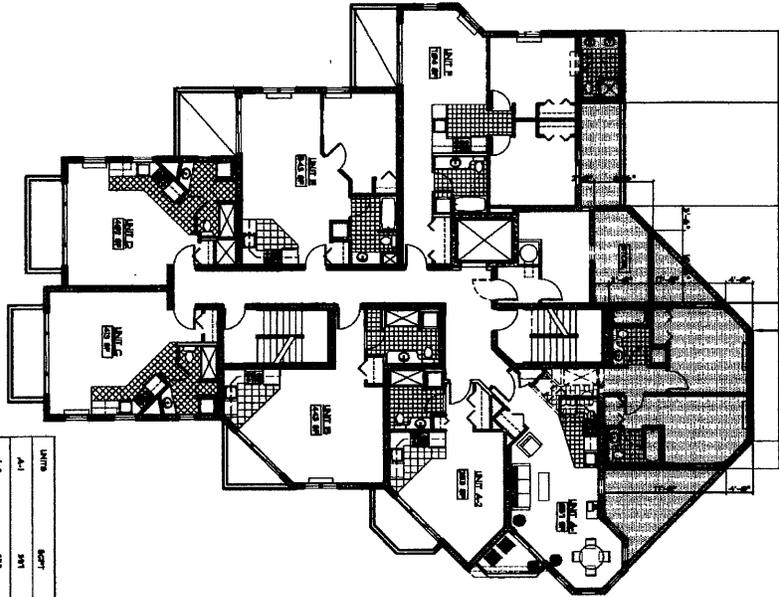
AND PUBLIC TRAILWAY, ACCESS AND FACILITIES FROM PUBLIC TRAILWAY, LAMBERT, APRIL 2004, 34-20724.



DESCRIPTION (FURNISHED BY CLIENT)
 LOT 1 OF THAT CERTAIN SUBDIVISION KNOWN AS BEACH SHORES, LINED
 IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE COUNTY
 OF FLORIDA, IN PLAN BOOK 9, PAGE 64.
 STRAP No. 84-46-83-04-0000021010

ROBERT A. WATKINS, LICENSED SURVEYOR
 ISLAND SHORES
 SECTION 84, TOWNSHIP 4 NORTH, RANGE 28 WEST
 OF THE 1ST MERIDIAN, FLORIDA
 DATE: 08/11/08

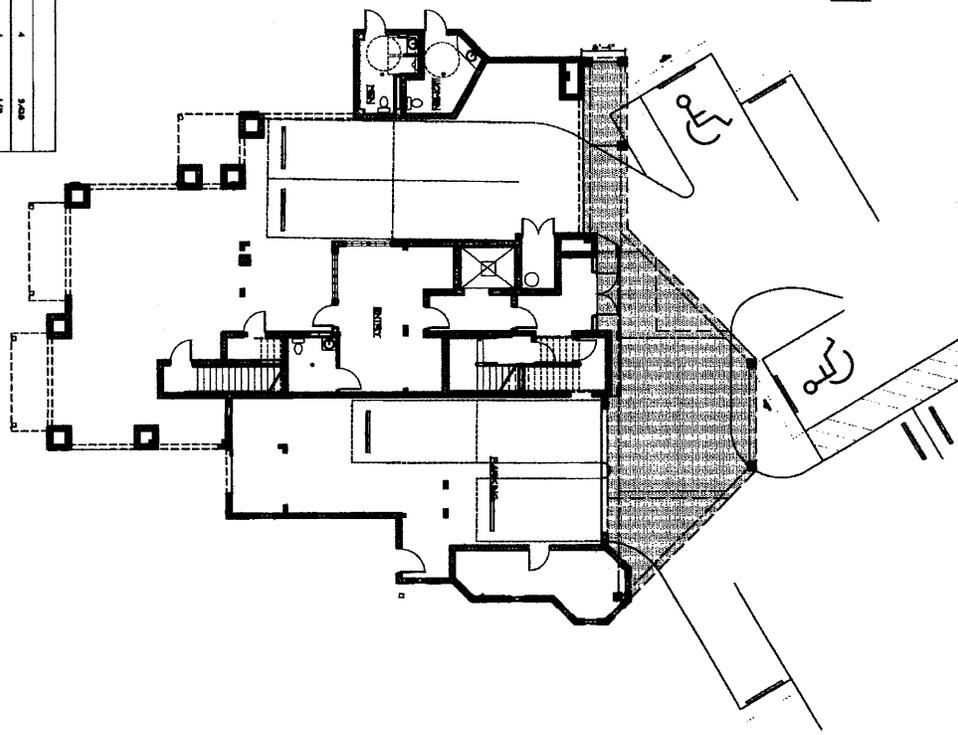
<p>DAVID H. WULF ARCHITECT 110 HILDCREST STREET, LARGENTON, FL 33906 TEL: 813-938-1100 FAX: 813-938-1101 WWW.DHWULF.COM</p>	<p>NEW ADDITION FOR: EDISON BEACH HOTEL FORT MYERS BEACH, FL.</p>		<p>DATE: 12-13-08 SHEET: 02-43</p>
	<p>PROJECT NO: 02-43</p>	<p>DRAWING SHEET 02-43</p>	<p>SCALE: AS SHOWN</p>



EDISON BEACH HOUSE
SECOND FLOOR PLAN

UNITS	SQ FT	NO	4	3,429
A-1	341	891	4	3,429
A-2	302	...	4	1,208
B	443	...	3	1,329
C	429	...	3	1,287
D	482	...	3	1,446
E	343	...	3	1,029
F	364	...	4	1,456
GRAND TOTAL	1,219	1,441	34	32,373
CONVERTER	1784	1784
CONVERTER	43	1298	...	1,249
GRAND TOTAL	12,871	3,889	34	36,621

INDICATES THE RELATIONSHIP BETWEEN THE UNITS AND THE OVERALL FLOOR PLAN

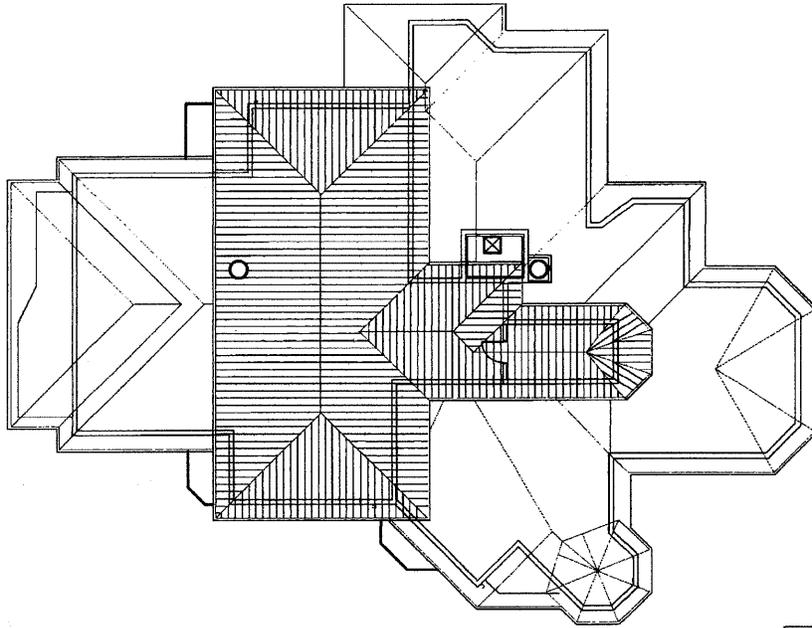


EDISON BEACH HOUSE
GROUND FLOOR PLAN
SELECTED STRUCTURAL LAYOUT

NOTE: THE UNITS OF THIS PROJECT ARE IDENTIFIED BY THE TYPE OF UNIT AND THE TYPE OF CONSTRUCTION. THE UNITS AND THEIR CONSTRUCTION ARE IDENTIFIED BY THE TYPE OF UNIT AND THE TYPE OF CONSTRUCTION. THE UNITS AND THEIR CONSTRUCTION ARE IDENTIFIED BY THE TYPE OF UNIT AND THE TYPE OF CONSTRUCTION.

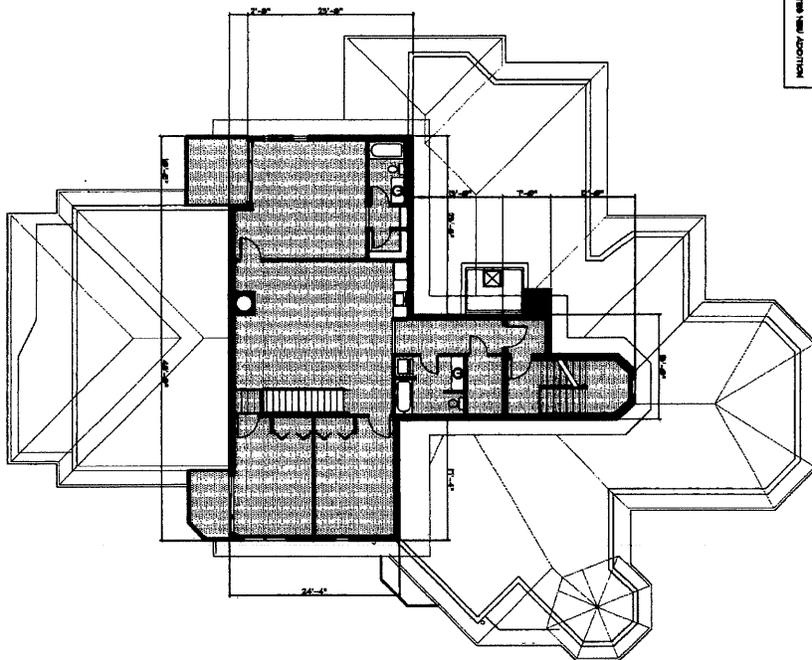
<p>PROJECT NO. 03-4-5 DRAWING A-1 SHEET 1 OF 1</p>	 <p>DAVID H. WULF, ARCHITECT 115 BELMONT STREET, FORT MYERS, FL 33901</p>	<p>NEW ADDITION FOR: EDISON BEACH HOTEL FORT MYERS BEACH, FL</p>			
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LOFT SCOPE PLAN



HATCHED AREA INDICATES NEW ADDITION

LOFT FLOOR PLAN



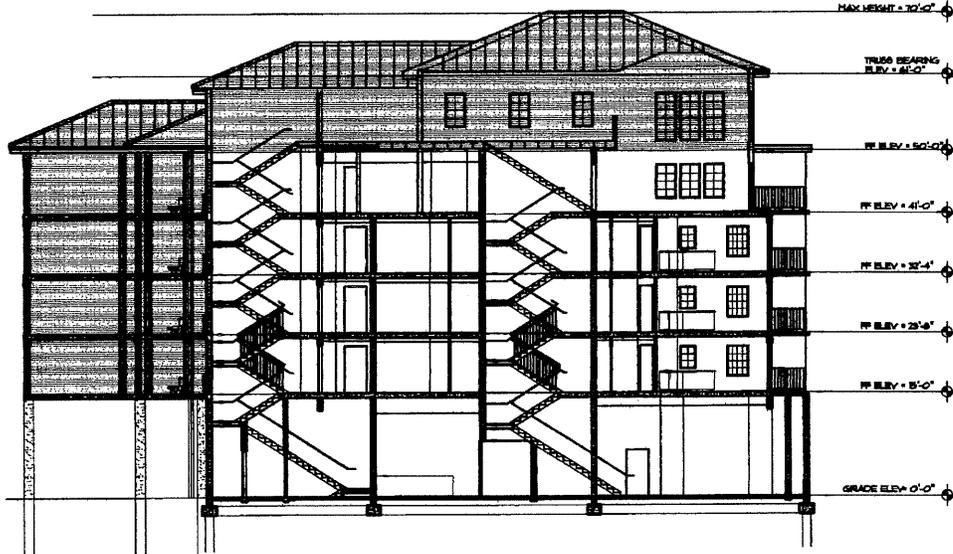
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PROJECT NO.
075-45-8
DRAWING
A-3
SHEET 3 OF 3



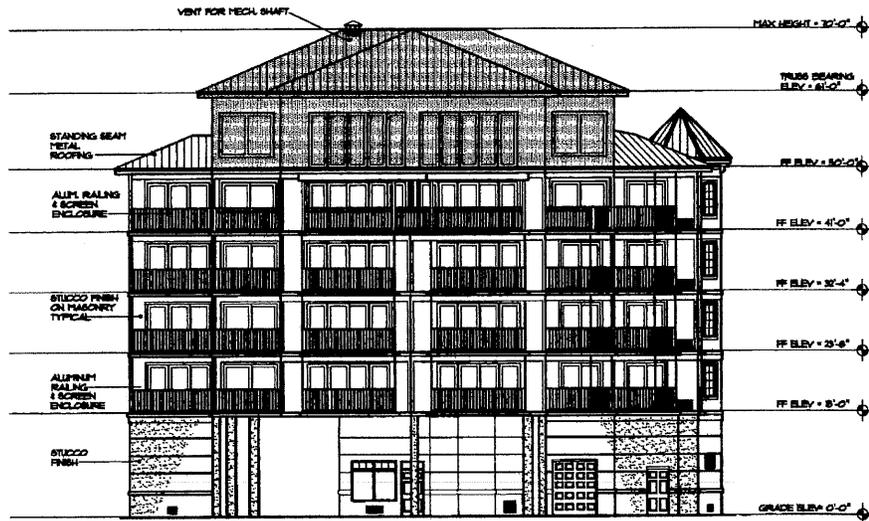
**NEW ADDITION FOR:
EDISON BEACH HOTEL
FORT MYERS BEACH, FL.**

DATE	12-13-08
BY	JAC
CHECKED	DWF
SCALE	AS SHOWN



LOFT ADDITION TWO STORY LIVING ROOM

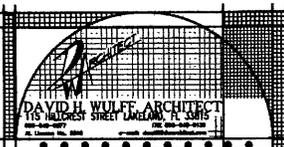
ALL DIMENSIONS UNLESS OTHERWISE NOTED. THE FINISH FLOOR OF ANY PROPOSED CONSTRUCTION SHALL BE THE FINISH FLOOR OF THE EXISTING STRUCTURE UNLESS OTHERWISE NOTED. THE FINISH FLOOR OF ANY PROPOSED CONSTRUCTION SHALL BE THE FINISH FLOOR OF THE EXISTING STRUCTURE UNLESS OTHERWISE NOTED. THE FINISH FLOOR OF ANY PROPOSED CONSTRUCTION SHALL BE THE FINISH FLOOR OF THE EXISTING STRUCTURE UNLESS OTHERWISE NOTED.



LOFT ADDITION TWO STORY BEACH ELEVATION

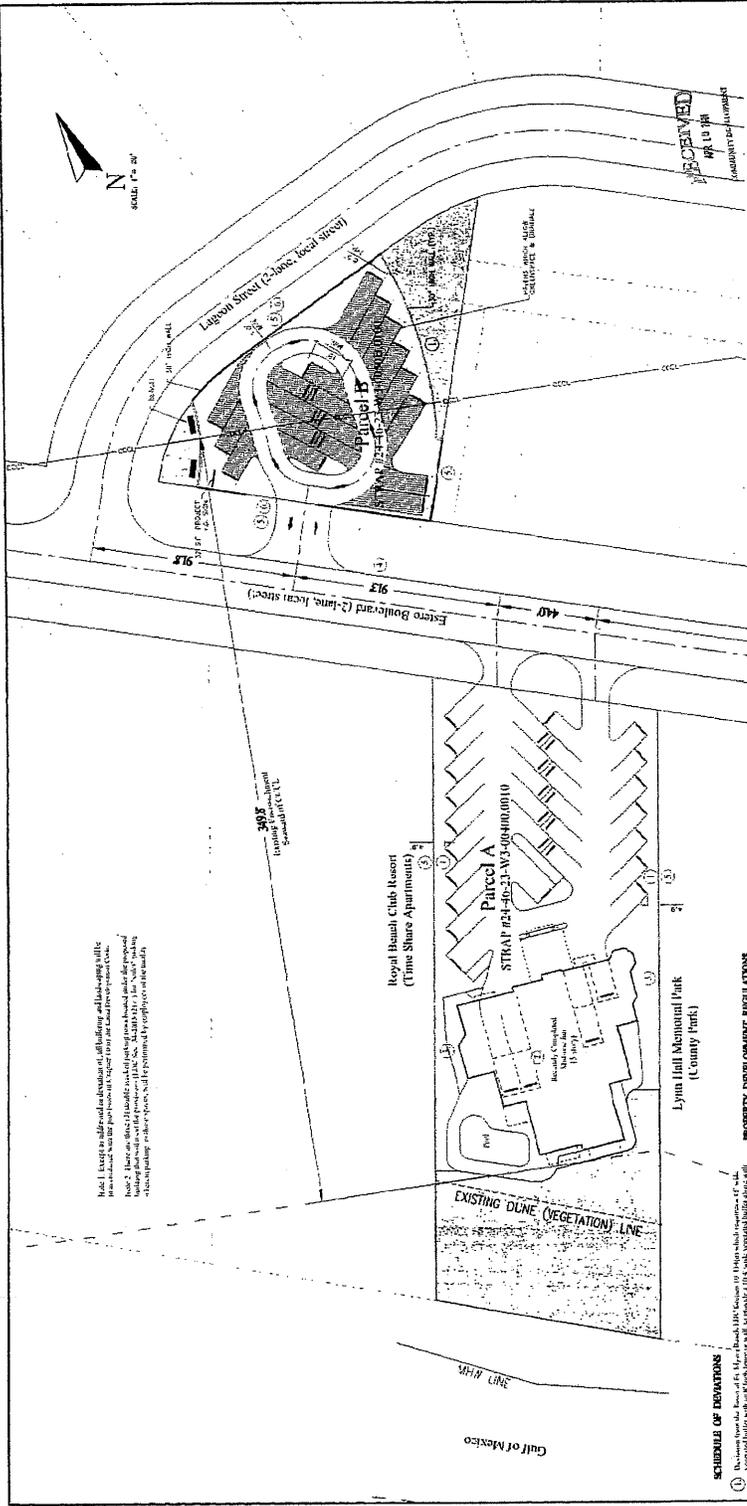
NOTE: EXISTING AREA INDICATED BY NEW ADDITION

PROJECT NO.
03-03
DRAWING
A-1
SHEET 1 OF 1



**NEW ADDITION FOR:
EDISON BEACH HOTEL
FORT MYERS BEACH, FL.**

DATE	DESCRIPTION



EDISON BEACH HOUSE
 (PINK PORPOISE PROPERTY)
COMMERCIAL PLANNED DEVELOPMENT
MASTER CONCEPT PLAN

(This plan is intended to comply with Option 1 requirements)
EXHIBIT IV-E Master Concept Plan
EXHIBIT IV-G Schedule of Uses
EXHIBIT IV-H Schedule of Deviations

SOURCE, INC.
 10000 W. 10th Ave., Suite 1000
 Denver, CO 80202
 Phone: (303) 755-1000
 Fax: (303) 755-1001
 www.sourceinc.com

PROJECT NOTESTANDARDS TO BE APPROVED WITH THIS PLAN

Project Name: Edison Beach House (P.P.D. No. 201-0000010)

Project Location: 10000 W. 10th Ave., Suite 1000, Denver, CO 80202

Project Description: The project consists of a commercial planned development consisting of a building, parking, and landscaping. The building is a three-story structure with a total area of 100,000 square feet. The parking area is located to the east of the building and consists of 100 parking spaces. The landscaping includes trees, shrubs, and lawns.

Project Standards: The project is intended to comply with Option 1 requirements. The standards for the project are as follows:

- 1. Maximum building height: 35 feet
- 2. Maximum building area: 100,000 square feet
- 3. Maximum parking spaces: 100
- 4. Maximum lot coverage: 20%
- 5. Maximum lot area: 10,000 square feet
- 6. Maximum lot width: 100 feet
- 7. Maximum lot depth: 100 feet
- 8. Maximum lot area ratio: 20%
- 9. Maximum lot width ratio: 10%
- 10. Maximum lot depth ratio: 10%

PROPERTY DEVELOPMENT REGULATIONS

Development Regulation Description

Regulation	Standard	Compliance
1. Maximum building height	35 feet	35 feet
2. Maximum building area	100,000 square feet	100,000 square feet
3. Maximum parking spaces	100	100
4. Maximum lot coverage	20%	20%
5. Maximum lot area	10,000 square feet	10,000 square feet
6. Maximum lot width	100 feet	100 feet
7. Maximum lot depth	100 feet	100 feet
8. Maximum lot area ratio	20%	20%
9. Maximum lot width ratio	10%	10%
10. Maximum lot depth ratio	10%	10%

SCHEDULE OF DEVIATIONS

Regulation	Standard	Compliance	Deviation
1. Maximum building height	35 feet	35 feet	None
2. Maximum building area	100,000 square feet	100,000 square feet	None
3. Maximum parking spaces	100	100	None
4. Maximum lot coverage	20%	20%	None
5. Maximum lot area	10,000 square feet	10,000 square feet	None
6. Maximum lot width	100 feet	100 feet	None
7. Maximum lot depth	100 feet	100 feet	None
8. Maximum lot area ratio	20%	20%	None
9. Maximum lot width ratio	10%	10%	None
10. Maximum lot depth ratio	10%	10%	None

EXHIBIT (c)

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 00-12**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA
APPROVING / ~~DENYING~~ THE REQUEST FOR SPECIAL PERMIT FOR
CONSUMPTION ON PREMISES WITH OUTDOOR SEATING**

WHEREAS, First Central Inv., Corp., as owner of the Edison Beach House has filed an application for a Special Permit in the CPD (Commercial Planned District) district for consumption on premises with outdoor seating; and,

WHEREAS, the subject property is located at 830 Estero Blvd., Fort Myers Beach, Florida, and is described more particularly as: Section 24, Township 46 South, Range 23 East: and,

WHEREAS, the applicant has indicated the property's current STRAP number are: 24-46-23-W3-00400.0010; and,

WHEREAS, a public hearing was advertised and held before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff and the Local Planning Agency, the documents on file with Lee County, and the testimony of all interested persons; and,

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES / ~~DENIES~~ the requested modification.

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval / ~~denial~~ of the requested modification:

1. The applicant did / ~~did not~~ comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is ~~no~~ error or ambiguity in the Land Development Code of Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate/ ~~inappropriate~~.

EXHIBIT (c)

- 4. That the Special Permit, as conditioned, is consistent/ ~~inconsistent~~ with the goals, objectives, policies and intent of the Lee Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
- 5. That the Special Permit, as conditioned, meets / ~~does not meet~~ all performance and locational standards set forth for the proposed use.
- 6. That urban services will / ~~will not~~ be available and adequate to serve the proposed use when it is constructed.
- 7. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

Alcoholic beverages to be available at office desk from 12 noon to 8 p.m. only, sale limited to guests only and charged to occupied rooms. No bar or pool-side service.

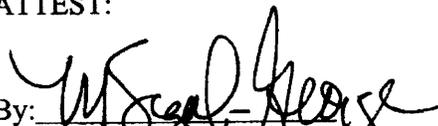
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

Anita T. Cereceda	aye
Daniel Hughes	aye
John Mulholland	nay
Garr Reynolds	nay
Ray Murphy	aye

APPLICATION DULY DENIED/GRANTED this 13th day of March, 2000.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
Marsha Segal-George, Town Clerk

By: 
John J. Mulholland, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney



MINUTES

**FORT MYERS BEACH TOWN COUNCIL
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

November 3, 2008

9:00 AM

I. CALL TO ORDER

Meeting called to order by Mayor Kiker at 9:03 AM. Present with Mayor Kiker was Vice Mayor Acken, Councilmember Babcock, Councilmember Raymond, Town Manager Scott Janke and Town Attorney Anne Dalton. Councilmember List was not present; Town Clerk Michelle Mayher was not present.

II. ANNOUNCEMENT OF COMMENCEMENT OF EXECUTIVE SESSION

EXECUTIVE SESSION CLOSED TO THE PUBLIC

A. BJH 2007-0001, Fred Paine v. Town of Fort Myers Beach

B. BJH 2007-0002, James Purtell v. Town of Fort Myers Beach

**ANNOUNCEMENT OF TERMINATION OF EXECUTIVE SESSION-
SESSION NOT NEEDED AND CANCELLED**

III. INVOCATION

Led by Reverend Jean Davis, Beach United Methodist Church

IV. PLEDGE OF ALLEGIANCE

Also led by Reverend Davis

V. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Mr. Janke advised the audience of the passing of Town Clerk Michelle Mayher's mother and asked for patience from everyone as the council attempts "to fill pretty big shoes."

Mayor Kiker also acknowledged the absence of Ms. List, who will be joining the meeting via telephone.

Mr. Raymond reported that he attended the Laguna Shores Annual meeting.

Vice Mayor Acken reported that the annual Town tree sale starts this month and gave some examples of what will be available. Councilman Babcock recognized Town staff for jobs well done with the events like the Volunteer Dinner, specifically Rick and Michelle. He also recognized the Mayor for an outstanding job as an emissary for the Town and publicly thanked him. The Mayor commented that photos from Town events will be posted more quickly on the Town website in the future. Mayor Kiker reported that he and Mr. Janke attended a meeting, along with Mr. Stillwell, Mr. Judah and Mr. Hammond in regards to TDC funding and the Red Sox issue with the county. He felt that the meeting was beneficial to the Town.

VI. PUBLIC COMMENT

Opened Public Comment:

Public Comment was heard:

- Margurite Burns, Mgr. of the Beach Observer, addressed the meeting and gave basic information about the paper and pitched the paper for advertising for Town bids.

Closed Public Comment.

VII. CONSENT AGENDA

A. North Estero FEMA Sub-Grant Agreement: The agreement has not come in, therefore the item was pulled from the agenda.

B. Resolution 08-47, Re-apportionment Plan for the MPO:
Mayor Kiker asked for a motion to accept the resolution.

MOTION: Councilmember Babcock moved to accept the resolution and Councilmember Raymond seconded the motion.

VOTE: Motion passed 4-0, with Councilmember List still not present via telephone.

VIII. PROCLAMATIONS

A. Alzheimer's Awareness Month

Vice Mayor Acken read the proclamation into the record, recognizing November as Alzheimer's Awareness Month and recognizing the Alvin A. Dubin Alzheimer's Resource Center for the work and support it provides to county citizens suffering from this ailment.

XI. INTERGOVERNMENTAL REPORTS

A. Fort Myers Beach Fire Department Chief Mike Becker (no back up material)

Asst. Chief Larry Evans addressed the council on behalf of the Fire Chief, thanking the Town for the new fire stations and their support.

Short break to address the telephone connection.

IX. ADMINISTRATIVE AGENDA

A. Legislative Lobbying Services, Presentation by Carole Green, Capital Strategies Consultants

Mr. Janke introduced Carol Green from Capital Strategies Consulting to give a presentation of lobbying services for the Town in Tallahassee.

Ms. Green gave a brief introduction about her services and explained that she and her company have served in the legislature, specifically for the Town, for several years. She explained how her services would help the Town in lobbying for issues like the water problems and others of the beach.

Councilmember Babcock asked if Ms. Green's company's intent was to help the council with capital strategic planning so that they are educated enough to acquire a new water system before actually attempting to lobby for the capital to initiate the system. Ms. Green stated that her company gives the strategy and consults about how to move the issue ahead from the Town to Tallahassee as a partnership with the Town. Councilmember Babcock mentioned that Ms. Green's company does work with Bonita Springs also and asked if there was a possibility that Ft. Myers Beach could join in with that relationship to have a stronger voice. Ms. Green agreed that there are strong possibilities for that.

Vice Mayor Acken asked if Ms. Green's experience extended passed Tallahassee to Washington DC. Ms. Green said that she has expertise in Florida but has had some experience federally, as well as many connections to help her step into the federal level. Vice Mayor Acken also asked for references of high profile legislation for which Ms. Green has lobbied. Ms. Green gave examples of Bonita Springs and her lobbying for the silt removal on the Imperial River, getting that funded about 50%. She also gave an example of legislation that she was instrumental in having "killed," namely dealing with changing the manner in which continuing care retirement communities are governed. Vice Mayor Acken asked how many other clients the company has and she answered that currently there are five clients and feels that there should never be more than ten at any given time, explaining that some are very short-term clients and easy to service. At Vice Mayor Acken's request, Ms. Green gave the names of her other clients: Bonita Springs, Bentley Village, Ponce de Leon Risk Retention Group, FL Psychologists' Association and Lee Mental Health.

Councilmember Raymond asked how Ms. Green would handle any conflict between what is the best interest of Ft. Myers Beach as opposed to what may be in the best interests of Bonita Springs. Ms. Green said first, they would disclose the facts and then meet with all parties to come to a conclusion. Ms. Green welcomed Councilmember Raymond's request to allow some council members to possibly accompany Ms. Green to lobby if they wanted to attend.

Mayor Kiker asked if Ms. Green was familiar with a project by the county regarding the grasslands in the bay area and what her interaction is with the county as opposed to just state level. He also asked how her company would change its structure in terms of who and how they would bill in issues where she represents the beach and Bonita Springs on the same issue. Ms. Green explained that there would not be any conflict or problems because the billing is handled by contract, with a six-month trial period, etc.

Opened Public Comment:
Public Comment was heard:

- Carl Conley addressed the council but actually wanted to comment on a different issue. Mr. Conley was permitted to speak because the meeting agenda was changed while waiting for Councilmember List's attendance. Mr. Conley's comments were regarding return of advertising to the local papers, meaning his paper, The Sandpaper. Mr. Conley promoted his website as well as his paper.

Closed Public Comment

The six-month contract proposal with Capital Strategies Consultants is for \$24,600.00 and Mr. Janke recommended that council move forward, with a list of legislative priorities to be voted on by them that would give clarity to anyone who goes to Tallahassee to lobby in the future. He stated that council needs to decide if they require a lobbyist and what their expectations are. Attorney Dalton added that she also needed clarity as to what parts of the contract Ms. Green, Mr. Janke and Ms. Dalton are to deal with in cooperation with council.

Mayor Kiker indicated that he has not had enough time to study this issue well enough to make a decision at this time, and that they should take more time to investigate the availability of grants, etc. for this project. Mr. Janke said that his main concern is the condition of the drinking water transmission system and said that an analysis of the system had been done by an engineer estimating the cost. This is a huge project and he pointed out that going to Tallahassee to lobby for funding will take at least two legislative cycles, or two full years, to get it under way. He added emphasis that this is a critical issue and it will take multiple sessions to get it to the point where it needs to be, so it is imminent.

Councilmember Babcock commented that there needs to be more things looked at before there can be a setting up of a contract.

Councilmember Raymond brought up his experience in dealing with this type of thing and agreed that the Town needs to have someone who can help the Town with future large projects that are on the agenda, especially in view of obvious problems for next year's budget.

Mayor Kiker again opined that before making this decision, there should be a workshop of sorts to thoroughly investigate the issue and identify all of the points to be addressed.

Mr. Janke agreed and suggested that Ms. Green do this with the Town to clarify all the legislative issues.

Ms. Dalton suggested that the council meet to discuss the synergy of Ms. Green's office with the Town before a contract. Discussion ensued about how to handle the work and the type of contract agreement.

Mayor Kiker suggested that the issue be put on the next agenda.

C. PUBLIC HEARINGS

A. Appeal ADM 2008-0002 Lani Kai Landmark Sign

Mayor Kiker asked for a motion to allow Councilmember List to join the meeting and vote via telecommunications.

MOTION: Motion made and seconded (*no names given*);

VOTE: motion carried 4-0.

Attorney Dalton commented for the record that there is a quorum without her [Councilmember List's] presence so it is conforming to the state law. Ms. Dalton referred council to their packages and explained the procedures of the standard of review of the Town Council. She explained that, under the Land Development Code, the LPA acts as the fact-finding and determining body regarding historic and landmark signs. The LDC governs that it is a quasi-judicial hearing, with all the due process rights and specifies that the Town Council will serve as the appeal board for signs that are denied the requested status. Ms. Dalton further explained the Council's duties as overseeing the LPA's decisions and fact-finding efforts, to be sure that they did what is required of them. The council must uphold the LPA's decisions if they determine that all was done properly. If the Council determines that the LPA failed to do their job, Town Council can modify, reverse or return it to the LPA for further consideration.

Vice Mayor Acken inquired about the necessity of Section 2 in 08-45. He wanted to state that not only is the Town Council's job to validate or invalidate the LPA's decision but also to hear an appeal. He pointed out that there may be a difference of opinion in a decision, but that does not necessarily mean that the LPA did not do its job. Ms. Dalton reiterated that council always has the option to disregard or agree with whatever is prepared. However, Section 2 addresses whether it was something the LDC advised the PA to do or was their decision outside of their jurisdiction. The other issue is whether or not the LPA gave proper public notice and if they followed the correct process, and if the LPA used the appropriate standards.

Councilmember Babcock asked if new evidence was brought up today, would that justify returning the issue to the LPA. Ms. Dalton affirmed.

Councilmember List asked if she was correct in understanding that there was still a question as to whether or not the LPA acted erroneously in the process of hearing the case. Mayor Kiker stated that new evidence is not permitted at this level but it would instead go back to the LPA. More discussion ensued regarding the procedural process for the appeal. Ms. Dalton suggested a threshold item, if the applicant's attorney would agree to it, to ask the attorney if he has any new evidence to present and then decide how to proceed based on that.

Mayor Kiker asked the applicant's attorney to come forward and asked if he was planning to present any new evidence and he stated that he was. Mr. Bob Burandt stated his name and position for the record, also as a resident and partner of a past Town attorney. Mr. Burandt stated that he disagreed with the Town attorney's explanation of the council's role in this appeal and stated that he had given her a case to review, the Palmetto West Park case v. the City of Doral. Mayor Kiker interrupted for a procedural concern and stopped the testimony to officially open the hearing.

Hearing opened.

Ms. Dalton read 08-45, with multi-sections, and stated the at the end of the day, council has the options to deny, modify or affirm the decision of the LPA and the ability inherently to return it to the LPA for further process.

Mayor Kiker polled council members for any ex-parte communications. Vice Mayor Acken spoke with the applicants at the meeting and has patronized the establishment several times.

Councilmember Raymond had none.

Councilmember Babcock said he has visited the site and has discussed the issue with some of the LPA members.

Mayor Kiker and Councilmember List had none.

Ms. Dalton swore in witnesses and again recommended that the council accept no new evidence, making the function of the witnesses only to be to testify to the propriety of what the LPA did on the lower level. Mayor Kiker asked how they will be made aware of new evidence being introduced. Dr. Shockey attended the LPA meeting so he will advise of any new items.

Mayor Kiker asked the applicant to present its case. Mr. Burandt addressed the council as attorney for the applicant, present to represent the Lani Kai in the appeal of the LPA's decision to deny them landmark or historical status. He stated that the Town Council, and not the LPA, has ultimate authority for deciding this issue and again referred to the case very similar to this case in Palmetto West Park v. the City of Doral. In that case the decision was left to a hearing officer, who approved a zoning request by an applicant. In the middle of the appeals process, the city incorporated and the burden then shifted to the city, and the issue was argued back and forth in the case. In the end, the circuit court defined what the city council's position was in an appeal situation: "In addition, at quasi-judicial zoning hearings the municipal body acts in a fact-finding capacity to decide disputed adjudicatory facts based upon evidence adduced at the hearing and ultimately determines the rights of the parties..."

The LDC and its appeal process does not state what the role of the council is. He cautioned the council against making the LPA the final decision maker and said they need to define what the next step would be when an appeal is taken to the council. Mr. Burandt also complained that the fee for appeal to the Town is "way excessive." He stated his intention to ask for a refund of the \$1000.00 fee for his client. In summary, he stated three basic issues for the council to consider, one being the constitutionality of the ordinance itself and the fact that, to be constitutional, there needs to be well defined guidelines for historical or landmark signs. The second issue is that it cannot affect a person's right to free speech under the first amendment and a sign that regulates the sign is unconstitutional if it's geared towards the content of the sign as opposed to the structure itself. He pointed out that three other business's signs have been approved: the Red Coconut, St. Peter's Church and the Holiday Inn. Mr. Burandt said that he submitted a package to the council and asked that the council consider this and make it part of the hearing record, adding that it is new evidence and asked council to look at the pictures (in the packet). Ms. Dalton objected on two grounds: first, the Town Council has a procedure of not accepting documents in a quasi-judicial hearing for the first time and, second, that the evidence is outside the boundaries of this proceeding.

She also stated that she does not agree with Mr. Barandt's analysis of the case he has quoted.

Vice Mayor Acken (*based on town manager's assistant's notes as no names were stated*) interjects that if the Town does not allow the new evidence, there is a great advantage for the applicant to have an appeal. Mr. Burandt pointed out that the new photograph only shows the new Holiday Inn sign, which was recently approved as an historic or landmark sign, and said that they have asked the Town for the Holiday Inn package so that they could review it and understand why that was approved and their sign was not.

Mayor Kiker asked for clarification on who and how the request was made to the Town. Mr. Burandt asked the applicant's son to step forward as being the one who requested the information. Mr. Ken Conadaris stated that he called and left messages with Dr. Shockey and personally appeared at the Town building.

Mr. Janke asked Dr. Shockey how long these requests normally take and Dr. Shockey explained that Mr. Conadaris had asked for minutes of the meeting which have not been approved yet, therefore they are not considered legally accepted. An argument ensued regarding the Town's refusal to supply the applicant with minutes of electronic record of the LPA minutes.

Mayor Kiker brought the argument to an end and restated the problem of accepting new evidence, which Mr. Burandt insisted is only the addition of the new Holiday Inn sign, in conflict with the process. Mr. Burandt stated that the photograph was not available to his client at the time of the application and asked how the LPA members distinguish the Holiday Inn sign from the Lani Kai sign. Mayor Kiker opined that this is not an issue for this hearing and Mr. Burandt argued that he believed it is because the guidelines need to uniform and be applied uniform.

Mayor Kiker agreed that the council will be addressing the guidelines but that they cannot address why the LPA would make decisions one way or another and that it wouldn't be appropriate since they are only to deal with the facts of the issue at hand and if the LPA followed the process. Once again, Mr. Burandt stated that he did not believe that this is the standard because the council has the ultimate decision to approve or disapprove the sign as an historical or landmark sign and doesn't feel that the process taken by the LPA is actually relevant as to the decision.

Mayor Kiker expressed his eagerness to get to the bottom of this issue and hear all evidence to make a decision, but also does not want to put the council in a bad legal position for appeal processes in the future for this case. He insisted that the council be given the time necessary to investigate this issue further and learn the guidelines within which they must act to make the proper decision. He added that he prepared for this hearing using the guidelines with which he and the council were familiar and not the different set of rules suggested by the applicant today. The applicant stated that the guidelines were not brought up by him but rather the court, and Mayor Kiker said he's never seen those before or heard of them so he wants to read the legal guidelines himself before making the decision then. Mayor Kiker also expressed disappointment that the applicant felt that they were not getting the cooperation or results they wanted from the Town and said that the problem needs to be addressed. He gave the applicant

the opportunity to continue the hearing to allow for council to research the proper process guidelines and for him to get the necessary information he needs to be prepared. Mr. Burandt stated that, based on what is being discussed, he felt that he needed to brief his constitutional arguments, which he felt will invalidate the ordinance because it violates free speech for the beach businesses by controlling content. Mayor Kiker asked if the applicant is permitted to present his brief, would he be satisfied if the council then made a decision to continue to understand all of the arguments he makes. Mr. Burandt agreed that that would be acceptable and pointed out that Ms. Dalton is the attorney for both the Town Council and the LPA and thought that she may be in a precarious position due to that; he also pointed out that three of the five council members have sat on the LPA and that three of the five of council present approved one of the exceptions. He added that he was sure that the council was just as confused as he was when he read the ordinance.

Ms. Dalton objected to the applicant's comment to the possibility that she was in a "precarious position" and avoided explanation of her service in both capacities, saying that Mr. Burandt is aware that her position is appropriate. Ms. Dalton also opined that there is a threshold issue here, mainly what is the process of the council today? Is it to just hear the lower the lower proceedings and determine if there was an error or it is truly to consider the applicant's argument and the case that he has presented to consider new evidence? She added that on that basis alone, the matter should be continued to allow for consideration of the threshold matter, and if applicant has new evidence to present, it should be considered by council with proper knowledge of the process and not just "on the fly." Mr. Burandt agreed with Ms. Dalton and cited Section 30-56 of the LDC "the Town Council will serve as the appeal board for signs that are denied historic and/or landmark status..." and said again that the central question still remains unanswered regarding appropriate guidelines being in place and if they were available at the time of the application. He continued that the matter could move forward today if a broad perspective is permitted to allow the applicant to present all that they feel is pertinent and allow some of the LPA members present to explain the status of the Holiday Inn sign. Once again, Vice Mayor Acken reminded the meeting that the LPA minutes have not yet been approved and therefore not available to contest or accept. Further argument ensued regarding the minutes being available for the LPA.

Mr. Weimer, of the LPA, addressed the council and stated that he is ready today to address the questions as to whether appropriate guidelines and appropriate process were used to make the LPA's decision, but not to address the constitutionality or validity of the Town's LDC, nor did he believe that this is an matter at all for this body, at this time. Mr. Burandt agreed to a point but restated his opinion that the Town Council and the LPA must deal with verifying that this ordinance is constitutional and suggested that the Town attorney be given time to review the document and make proper recommendation as to its constitutionality. He continued that if the Town attorney finds it unconstitutional, the Town Council has a duty to strike the ordinance down or modify it to comply.

Mayor Kiker suggested that constitutionality should be a question for a later appeal and that this matter should proceed under the current guidelines which are in place.

Ms. Dalton stated that she is prepared to advise council on the appeal of this issue scheduled for today but that she was not given any advanced notice that a whole section

of the LDC would be challenged at this proceeding so she was not prepared to address that. She also noted that the applicant's attorney, Mr. Burandt, and his office were responsible for crafting the sign code he is now citing as unconstitutional.

Mr. Burandt admitted that was a fact but said that a 2006 case from the 11th Circuit (SWFL included), which was had not been decided at the time his firm drafted the ordinance, which has changed that and he summarized the case law saying "if you have an exemption for flags for non-profit organizations, that makes the ordinance unconstitutional." He pointed out that the Town's ordinance specifically states that and that by letting a non-profit fly a flag, the LDC is now regulation content and not location. According to the stated ordinance, its purpose is for beauty and traffic, and the 11th Circuit decided that that was not enough.

Mayor Kiker stated that he was 100% uncomfortable with this matter, considering that the council had not been apprised of all of the information that has been brought up and feels that there is definitely more time needed for proper researching and instruction on the proper course of action. He asked that the matter be continued for that purpose, asking for the applicant's permission. Mayor Kiker wants to have plenty of education for the council to do this and is not sure that this body is the correct one to even address the unconstitutionality of the ordinance.

Councilmember List commented that she agrees with the Mayor and suggested continuance. She also commented that the ordinance is confusing and difficult to work with, as it doesn't make clear the process and the function of the council at this level.

Councilmember Babcock was adamant about moving forward, stating that accusations are being made that the Town does not have any process and there are no guidelines in place, and he feels it necessary to move ahead to show the public that this is not true.

Mayor Kiker wants to continue to clear up the "new evidence" points and other issues so that they can make an informed decision. But again, Councilmember Babcock stated that the actual issue is should the new evidence be submitted; if it is accepted, then they council could choose to continue or send it back to the LPA, if they feel the evidence is significant.

Councilmember said that he feels the case should go back to the LPA with any new evidence and return after their review. Vice Mayor Acken is not interested in overturning the whole ordinance but rather in making the existing ordinance fair for all so that there are no possibilities to overturn or appeal the law later.

Mayor Kiker pulled the focus back to getting to the point of making a decision to continue or proceed today, without shedding responsibility to act.

Ms. Dalton wanted to make two points before that decision is made. She stated that Mr. Burandt advised that there is an expert witness present to address the structure that the LPA used in determining the procedures, a Mr. McDole. She advised the council that they may decide that, based on this testimony, the case should go back to the LPA. The other thought that she had was exemplifying the district court's process for appeal: in that arena, if a case went to the lower court and an appeal was filed from that case, between the time the appeal was filed and the time the court hears it, if new case law comes up, those cases CAN be considered by the appeals court in some instances. She pointed out that the resolution and passing of the approval for the Holiday Inn sign

could be considered, in this court, to be the equivalent of the new “case law” in a district court. So, the findings of fact that lead to the new resolution, and the resolution itself, would be relevant to this situation and the LPA does not have approved minutes so it is not possible to have that today. Her recommendation is to continue this matter, sending this back to the LPA to allow them to hear Mr. McDole’s comments on the process for additional information. Mr. Burandt still held that the Town should hire a constitutional attorney to review the ordinance before sending it back to the LPA, because he feels strongly that he is right and an independent lawyer will agree, so there would then be no need to go further. He emphasized that, although Ms. Dalton is an excellent attorney, she is not able to act freely in this matter due to her dual position.

The Mayor polled the members as to returning the issue to the LPA or continuing the matter to another date to return to the Town Council level.

Councilmember Babcock dissented but the other members decided to continue with the council with new evidence. Ms. Dalton cautioned that the applicant not produce any additional new evidence at the next hearing but he said he couldn’t agree because he doesn’t know if the LPA has any new sign requests before it. Discussion ensued regarding dates and any applications pending with the LPA. The second meeting in January was decided for an evening meeting.

Mayor Kiker asked for a motion to continue the hearing until January (with Ms. Dalton adding the deadline of submitting materials by Nov. 30th and Ms. Dalton’s by Dec. 31st) so that they can be reviewed in a timely manner without having to postpone).

MOTION: Vice Mayor made the motion and it was seconded by ????

Councilmember Babcock is still not satisfied with a continuance because he feels that the Holiday Inn decision was made after the Lani Kai, and that there were written guidelines in place prior to any of the decisions being made. He said that he is ready today to determine whether the Lani Kai process was done appropriately by the LPA and does not feel that any new evidence will have bearing on the decision of proper process. Mr. Burandt cautioned that if he is right in his argument, then the Town Council will have violated the applicant’s rights because they have used the wrong standard, so the Town Council needs to be sure that the standard they use is appropriate or it will be another avenue for appeal. Again, he suggested review of the evidence and the signs and determine whether or not they both qualify. The guidelines must be clearly defined and uniformly and fairly applied.

Mayor Kiker pulled the focus back again and stated that there are two things going on: the applicant would like to discuss the resolution and the minutes from the LPA and they are presently not available for review; also, the case law that the applicant refers to has also not been made available to the council. As a side note, the applicant is suggesting that Town Council look at the constitutionality of the code, although it will not be part of the hearings.

VOTE: motion passed 4-1, with Councilmember Babcock dissenting.

Public comment closed.

Vice Mayor Acken attempted to make a motion regarding the fee since the applicant was prepared to proceed and would incur expenses due to the continuance. There was no second to the motion, therefore it failed. There was brief discussion regarding the entire fee schedule and it may be addressed in the future.

BREAK FOR LUNCH.

RECONVENE AT 12:15 PM.

B. DCI 2007-0002 Edison Beach House

Attorney Dalton referred to Resolution #08-48, adds that this is a regular quasi-judicial hearing at which LPA makes a recommendation and Town Council makes a decision. Ms. Grady was not present for the LPA hearing but is present today to share a picture with Town Council. It was also noted that Mr. Yerkes was present to represent the LPA.

Hearing opened at 12:45 and Mayor asked if there was any ex-parte communications. There were none. Ms. Dalton swore in witnesses.

The Mayor called on the applicant to address the meeting. Beverly Grady, represented Larry Yax for Central Investment Corp. She stated that the applicant and his architect filed an application, heard by the LPA and approved by Town Council in 1997. At that time, the applicant wished to develop a new, code-compliant hotel with a caretakers residence, 24 guest rooms, one dwelling. He owned The Pink Porpoise 815 Estero Blvd. and 830 Estero, which is now the site of the Estero Beach House. At the time #815 contained 8 apts. and #830 contained four duplex (8 units), six town houses and three other units, for a total of 25 units on the three sites. The applicant filed for an application to rezone for multi-family RM2 and C1-2 CPD. In that, all of the density was placed on #830 Estero Blvd., in one structure, five story, upper parking and on April 7, 1997 the Town Council of Ft. Myers Beach approved the CPD for the five story over-parking hotel with the caretaker's residence. One of the conditions limited the guest units to a total of 3,200 sf, limited the height to 70 ft., it stipulated that #815 Estero Blvd., parcel B, was approved for a park. The staff recommended approval of the hotel, the caretaker's unit and that 815 Estero would be appropriate for government agency to include a Town Hall. The LPA also recommended approval of that original request but the council limited parcel B to a park at that time. Ms. Grady then presented a long Power Point presentation, with charts, etc. to support their position and referred to the Comprehensive Plan, Chapter 15, wherein it addresses issues she highlighted, #4 and #5 (see Comp. Plan). In view of these, Ms. Grady submitted for the applicant that the plan development approved by the Town Council of Ft. Myers Beach is deemed consistent with the plan and respect that the Council wanted to protect the private property rights. The over-parking hotel, with the 24 guest units on four floors (#2,3 and 4), and the one caretaker's unit (two levels-fifth floor and a loft), were built. It was built with guest rooms with sq. ft. of 11, 212; the approval was for 13,200 sf for the 24 guest units and what was built was 11,219 sf, leaving 1,098 sf of the approval by Town Council that has not been used. Ms. Grady pointed out that the applicant is requesting a total of 13, 378 sf , 178 sf more than what was approved in 1997. The applicant could live with just recognizing the square footage that was approved in 1997 and reduce the total by 178 sf.

The applicant is also requesting an increase in the loft section of the caretaker's unit to add an additional 1,259 sf. This would make the square footage requested for the guest units what was originally approved by the Town and the last issue raised by staff was the height. Ms. Grady stated that the height does not related to the guest units but to the increase in size of the loft, which would require changes to the roof line, an increase of nine feet, within the height approved by Council in 1997. On March 13, 2000, the Town granted consumption on the premises for the Edison Beach House and on June 4, 2001 the Town approved a master concept plan change for the parcel B 815 Estero Blvd., to revise that master concept plan. On Dec. 20, 2001, parcel B was sold and on Sept. 17, 2002, a zoning verification letter was issued finding all in order on the whole parcel and is asking to complete what has already been approved and to expand the caretaker's unit, which is the residence for the owners. Ms. Grady continued to give a long history of the plans and application process, which started in 2006, to support the applicant's complaint that this process takes considerable time, effort and money. For example, in Feb. of 2007, applicant's architect presented plans to Dr. Shockey and in April 2007 the county requested an Application for Waiver of the Transportation Submittal Requirements, which was denied. The applicant then hired a transportation expert who did a traffic impact statement (included in packet) at a cost of \$4000. Ms. Grady then showed the Power Point presentation which illustrated the information she already presented. In summary, Ms. Grady again stated the three basic requests of the applicant: expansion of the pool deck, an addition to the loft area of the caretaker's unit and raising the roof by approximately 9 ft., still staying within the height limit at the time of the original approval.

Ms. Grady referred to a copy of the staff recommendations and made points to the council comparing the schedule of uses of what was approved in 1997 to the new list, it has been reduced. For example, consumption on the premises approved as part of mini-bars in the rooms in 1997 and a special exception granted in 2001, it is not in the approved list of uses. Food and beverage service, which was also in the original approval, is also no longer in the current list. The site development regulations are also different from the approval, for instance the minimum Floor Area Ratio did not exist in 1997. Ms. Grady pointed out other conflicting points and went through the conditions, mainly conditions 6 and 7. She stated that the applicant feels that he is consistent with the 1997 approval, being a lawful use, they have lawful density, lawful intensity, and they do not understand numbers 6 and 7.

**Short break.
Reconvened.**

Dr. Shockey addressed the council for staff and reviewed the property again, stating that this case is more complicated than typically mainly because there was another parcel involved at the time of approval in 1997. That parcel is not owned by the applicant anymore and the request is for rezoning of the existing parcel, not any parcel owned by another party, and to adopt a new master concept plan with additional development on it. The staff recommends approval of the rezoning to the new CPD, with the staff recommended conditions, but denial of the two deviations that address the request as a rezoning request under the current Comp Plan that applies everywhere in the Town of Ft. Myers Beach, as these would be deviations

from the current LDC to allow increases in things that are currently non-conforming with regard to what applies today. Dr. Shockey pointed out that plan development rezoning does not grant unlimited development rights in perpetuity, as there is a period of time either specified in the LDC or other, if it was stipulated at the time in the resolution. There is a time limit during which the project must be constructed. After that time, that portion of the MCP is deemed "vacated" and further construction is done by re-application or rezoning of the property. Since this full parcel is no longer owned by the original applicant, the property must be rezoned at Mr. Yax's sole request for him to continue any construction. Dr. Shockey stated that since this is a rezoning issue, the request is evaluated under the requirements of the current Comp Plan, specifically Section 15 of the Comp Plan which suggests that "*plan development zoning approval is granted by the Town Council since incorporation are deemed to be consistent with the Plan.*" It does say that the categories of approval are consistent with the Plan, subject to the "applicable conditions set forth below," one is that they are specifically approved and the other is that the activity is not deemed consistent if there has been a substantial deviation from the approval granted. He pointed out that the applicant was granted certain rights in 1997 and in 2001 but the applicant constructed a project that didn't exactly match those rights. Since that time, the rights are vacated because of the specific time periods in the LDC being expired. In view of this, staff's position is that the master concept plan is vacated and additional development would require reinstatement or rezoning of the property.

Mayor Kiker asked for any questions. Vice Mayor Acken asked what timeframe specified in the LDC would apply here. Dr. Shockey believed it is five years for completion of the initial phase and eight years for all phases from the most recent MCP, this period ending in 2006.

Councilmember Raymond asked how this new request would have been different if there was not a new owner to part of the property. Ms. Dalton clarified the question: If the parcel that is gone now was gone then, would the applicant have gotten the approvals that they got? Mr. Shockey said that there was development on parcel B which was used as the basis for what is there today, so they would not have gotten the same approval, according to the Comp Plan.

Mayor Kiker then called Mr. Yerkes for the LPA. Mr. Yerkes explained that the LPA did not look at this as being very complicated. The original approvals had expired so the LPA was basically faced with an application that was non-conforming building which would be further non-conforming if the height and density deviations would be approved. The LPA was clear in having to deal with the current LDC and the rules as they stand today, which dictate that the building is too high and going higher would result in a further non-conforming situation, and the same is true with total square footage. There are many other issues, including parking, and the LPA wanted to be sensitive to the applicant and the impact on the Town, the LPA stayed on task to use the rules and regulations of the LDC to make their decision. Mr. Yerkes said that the LPA was diligent in their review and unanimous in its decision to deny, based on the process and reports involved.

Dr. Shockey added that staff would not object to adding the approved items from the previous master plan to clarify that uses on the property that were approved can continue and the applicant's concerns about the floor area ratio, etc., were explained

that they were added to specify that the building is non-conforming, but not required to be cut down or modified in any way.

Opened Public Comment

Public Comment was heard:

- Mr. Yax, the applicant, addressed the meeting. He gave a brief history of his ownership of the Edison House and the good service they have provided to the Town. The applicant again appealed to the Council for the approval to expand his residence to accommodate himself and his wife and future possible medical assistance needed.

Closed Public comment..

Mayor Kiker then asked the Town Council for any questions or comments. Vice Mayor Acken asked staff how this will affect of 815 Estero; Mr. Shockey and Ms. Dalton stated that there is no impact. Understanding that that property is not effected at all, why has the applicant's rights have changed? He didn't understand why the density transfer would be an issue at this point, changing the applicant's rights. Ms. Dalton replied that there are two different issues, one being the status of the parcel across the street in that there was a covenant of unified control, which was broken at the time the parcel was severed. The other issue is that Ms. Grady is insinuating that there is some type of "grandfathering in" of rights in question and that is not the case, and a separate issue than unified control. Basically, the Vice Mayor was concerned about the timeframe within which the applicant approached the Town to make his application. Ms. Dalton stated that this didn't matter since there was no formal actual application made and, therefore the applicant had two roads to choose, and he chose the rezoning road, and did not request to extend the MCP as it existed at that time. The issue in front of the Council today is a filing for rezoning.

Ms. Grady responded that the applicant came to the Town with his architect in 2006, and discussed it in Aug. 2006 with Brad Case (no longer with the Town). Ms. Grady asked her client if he had known about the time constraints and he stated that he had no idea there was a time limit. Ms. Grady went on to lay out what transpired next, as far as traffic impact studies, expenses, plans, etc. to show that the applicant had continued with all of this as though he was going to get it all done and in place, again not realizing there were any time constraints.

Mayor Kiker asked would the application still have been within the five year timeframe from when the applicant was before the council, questioning the traffic study, and had this not been held up due to the study or did the request for the study hold the issue up long enough to expire the time limit. Ms. Grady answered that she has the dates and looked for them. Mr. Shockey read the LDC, Chapter 34, section 34-220, which addresses the time limits *"time frames may be governed by a phasing plan, in the absence of a specific plan the resolutions subsequent phasing plan must proceed as follows: within five years of the date of approval by the Town Council, the first phase must have been completed and a development order must have been obtained for the second phase; within eight years of the date of approval, the second phase must have been completed and a dev order must have been obtained for the entire project. Any phase for which a development order has not been obtained, or for which development has not been completed by the time specified in the resolution, shall be deemed vacated along with all subsequent phases."*

Ms. Dalton added that you cannot apply for an extension if all of the owners are not in the application and the breaking of the covenant of unified control made it legally impossible to consider an extension.

Ms. Grady reported that the applicant submitted an Application for Waiver of Submittal Requirements for Ft. Myers Beach was filed on April 25, 2007 and denied in May 2007, and then hired the expert in transportation to do the study, including a count in Dec. 2007, to capture peak traffic. Council wondered if the applicant was not given incorrect direction by having them get the study instead of just being denied at the time.

Dr. Shockey stated that they had the option to apply for rezoning regardless of the traffic study that they were outside the time limits to amend the existing zoning or extend the master plan.

Mayor Kiker pointed out though that if it was actually six years and six months when the applicant asked for the last process to begin, and it was outside of the five years, and it didn't matter anymore, instead of sending them for a study, the applicant should have been advised of that. Ms. Dalton interceded that the applicant had choices, one being the extension of the plan, which was within the timeframe. The applicant chose to pursue rezoning, which is timely. The Mayor asked where the traffic study comes in and Dr. Shockey replied that it was a standard for this process and unrelated to the timeframe.

Ms. Grady disagreed with the Town attorney's statement regarding the code and asked what is the status if you have a planned development and you sell off some property? She said that there is a processing requirement that you should file a substitute unified control but it doesn't state the consequences for not doing so. Without that section it is clear under the code 34-218 wherein it says "it's binding upon the applicant, any successor entitled to interest to any or all of the planned development; departure from the approved plan or failure to comply with the conditions..." that's a problem. Dr. Shockey stated that there was no phasing plan specified in that matter. The Council discussed how long the application went on and what the start date was. Ms. Dalton stated that the filing of the application is what stops the clock. She cautioned that stopping the clock at an earlier time, it will affect many other beach issues. The Mayor can not understand how the Town can request someone to go get a study and then when they do so, a year later the Town explains why it was needed. Ms. Dalton pointed out that this is an interesting point but it does not go to the issue of the extension of the master concept plan or not, or to the issue of should there be a tolling of the five year period or not. The traffic study was a requirement for the rezoning, a different concept than the MCP. Dr. Shockey pointed out that the traffic study actually helps the applicant's case in that there is no impact to overall traffic. The applicant added that he had paid a \$5000. fee for this hearing not knowing that there were any problems in the process.

Short break-5 minutes.

Mayor Kiker noticed that Councilmember List was no longer in attendance via phone and took a few minutes to reconnect.

Reconvened.

The Mayor suggested a conversational type session and stated the facts, as he understands them: you have a piece of property and the application limitations, under the five year limit, ran out. He asked how the Town asked for a traffic study and \$5000. from the applicant, then explained that it was because that, outside of that application, the applicant began another separate process, for rezoning, the cost being \$5,000. In order to accomplish that, the applicant was asked to put together a traffic study to supply zoning information to the Town. The fee is still in tact and the applicant can still complete the new process, which is not why they are present today. He added that there is no way to be able to mix the two issues and make a decision. The statute of limitations ran out in 2006 and that process is done. He asked if that was a correct assumption. Ms. Grady said her client was not clear about the process at the time and he and his architect were under the impression that they had met with staff and were following the path and direction of the Town. The Mayor asked if there was no clear understanding that the five year limit was over, why then have they paid the \$5000. and started a whole new process. Mr. Yax said he thought this was all the same process for obtaining a building permit. Dr. Shockey recalled a conversation with the architect during which he asked about amending the development order under which the original hotel was built in order to build onto the hotel; he did not know what the whole conversation entailed between Mr. Case and the architect. In the spring of 2007, when the Town was receiving application for public hearings, they received the applicant's \$5000. and an unclear application. The staff continued to counsel the applicant and architect over the course of about a year on what the process would be to get approval of what they were asking for. Dr. Shockey explained that with the application, there were drawings and information regarding what was being requested but stated that there was never any discussion about extending the prior MCP because that was out of the question, since the five years were expired. Mr. Yax said "I knew nothing about that at all." He added that he would not have had the architect continue to keep drawing if he had realized it was out of the question.

Mayor Kiker announced that the council is now at a decision block and will now just deal with the decision that is before them at the moment. Ms. Grady added that her biggest concern is the conditions as written have now put her client in a worse position as they were when they started out so she asked that that be considered and trying to work together, with no new set of conditions on this piece of property. To clarify, the Mayor asked "If you are knowledgeable that we are ready to make a decision based upon this information, you would rather us not?"

Ms. Grady said that they wanted to hear some indication as to whether they Town council was going to approve their request, in part or whole, but if not they would be concerned that they would move to the next level, which is adopt those conditions contained in the staff report as written and that's what we want to get on the record. Ms. Grady's feeling is that even if the council decided to grant pieces they would still end up saying that some work needs to be done on the conditions. Ms. Dalton stated that she does have the 1997 resolution and offered to draft it. Councilmember Babcock said that council will discuss all of the issues put on the table. The one that was brought out today, and actually suggested by staff, is that the council may also consider amending the uses that are in the current resolution to include uses that the

applicant was entitled to in 2001 or 1997, is that correct? Ms. Grady agreed that was accurate.

Dr. Shockey again referred to the LDC in effect at the time and said that the uses approved at the time were based on those out-dated uses in the older code. For example, in 1997, there were restrictions on fences and walls and now those are not necessary anymore for this property because the same restrictions now apply to all property on the island. He mentioned that if there are specific uses the applicant is worried about, the Town could discuss and consider reinstating those.

Mr. Yerkes again commented on behalf of the LPA that by the resolution approving the CPD but denying the two deviations, they are approving all of the existing uses. There is no danger of those uses being lost within their resolution. Ms. Grady gave an example of consumption on the premises and asked if that would be approved. Dr. Shockey replied that it was already covered by a separate resolution. Ms. Grady argued that this is rezoning the schedule of uses and this would be part of the problem, especially the language added to both numbers 6 and 7, which says that the applicant is non-conforming, which she feels is not accurate. She said that what the applicant has today does conform with the existing CPD. Her concern is numbers 6 and 7, the deviations and the uses are different in the staff report then they are even from 1997.

Councilmember Babcock decided that everyone will agree that this is a new application and suggested moving forward. He asked her for specific use concerns she want the council to consider. Ms. Grady said food and beverage service and the COP that was in the guestroom bars in 1997, and the COP that was approved in 2001. More discussion ensued regarding Ms. Grady's concern about zoning and rezoning, issues that she has already argued, and her disliking of the term conforming and non-conforming. Councilmember Babcock moved to closed testimony and Councilmember Raymond seconded the motion. The motion was carried to 4-1, with Vice Mayor Acken dissenting.

Council discussion opened. Councilmember Babcock expressed his sympathy in the applicant's plight and certainly his frustration in having to deal unemotionally in his decision. He stated that he is forced to only look at the evidence as it applies and that in doing so, there is no question that this property is non-conforming as it exists, for density, intensity and for height. He added that all of the requests for deviation are for things that will further its status as non-conforming. The reason that he supports the decision of the LPA is because it is non-conforming for the stated reasons.

Vice Mayor Acken said that he feels that the applicant has operated in good faith for years and invested their time, energy and money in the Town for its better good. He stated that, no matter what, this applicant tried to work through this process and through no fault of any one person or entity, was not able to get his application to be approved. He feels that the applicant is not asking for anything that is unfair and that the Town should not be burdened by the process and do the right thing and give him what he's asked; if nothing else, and keep the rights he already has.

Councilmember Raymond restated that the applicant has had choices as to which route to pursue and made those choices. He does not advocate for taking away any

already approved uses and added that he stands by a statement he made last spring, that he will not agree to add height...anywhere. He agrees with the LPA as far as height and adding the extra space.

Councilmember List agrees with the height and spacing issues. She added that the attorneys are the ones who we look to for advice and direction in issues such as this and that the applicant had access to legal consultation. Having said that, she agreed with the LPA's recommendations in all regards.

Mayor Kiker commented that processes should be in place to help people and should be adhered to, as well as that there are professionals that are involved in the processes to guide and direct the applicants. He questioned how any of those people could go along with a recommendation to pay a fee of \$5000. to start a process not knowing that the original process was gone. He ultimately agreed with the general consensus in denying the application and not taking away any of the rights already given to the applicant.

Councilmember Babcock wanted to make a motion but the Vice Mayor asked if the applicant could have a chance to comment. The Mayor started to agree and Councilmember Babcock interrupted that "testimony is done here." The Vice Mayor pointed out that they had agreed to give the applicant a chance to decide, after hearing the opinions, whether or not to proceed. Councilmember Babcock again interrupted and said that there is a process to follow and it should be followed. He added that he would be willing to entertain a discussion of continuance but felt that it be between the attorneys and not the Town Council. Ms. Grady took a minute to confer with her client.

While waiting, Mr. Pohland sang a very condensed version of "God Bless America" as his penalty for a ringing cellphone, followed by a rather unusual version of a Beatle song performed by Town Manager Mr. Janke, "I'm sorry, Mr. Council..." for the same violation. The penalty phase was wrapped up by the Vice Mayor, also in violation of the cellphone rule, who recited (in a baritone) "M-I-C-K-E-Y..." The variety show continued with a question by the Mayor who asked "how many attorneys does it take to screw in a lightbulb", which Ms. Dalton did not find amusing.

Ms. Grady could not make a decision and discussion ensued. The Council made clear that once a motion is made, and voted on the hearing will be closed and the process is done. The applicant attempted to make a deal with the council and was denied. Again, Ms. Grady conferred with her client and asked that the matter not be continued.

MOTION: Councilmember Babcock moved that Resolution 08-48 be approved with the following: on page 1, that is says "*Town Council approves the applicant's request to rezone its CPD to a new CPD subject to the five conditions and no deviations set forth for the specificity.*" On page 2, *additional uses, one for consumption, the COP for the guestroom bars and the COP pursuant to the 2001 resolution, and the food and beverage service.* On page 3, under Deviation 1, "*the Town Council denies the request for Deviation 1;*" under Deviation 2, "*the Town Council denies the request for Deviation 2*". Under Findings and Conclusions, "*is consistent with an complies with all specific requirements;*" under 2, "*there is error or ambiguity which must be corrected;*" under 3, "*there exists changed or changing*

conditions;" under 4 "the proposed use or mix of uses as conditioned is appropriate;" under 5 "sufficient safeguards to the public interest are provided;" under 6, "all conditions are reasonably related;" under 7, the proposed use or mix of uses as conditioned meets all performance and location standards;" under 8a, "each deviation does not enhance the achievement of the objectives;" under 8b, "through each deviationwill not be preserved and promoted;" under c, "each deviation does not operate to the benefit and may operate to the detriment of the public interest;" under d, "each deviation is inconsistent with the Ft. Myers Beach Comp Plan." The second was by Councilmember Raymond.

The Mayor asked for any comments from Council. Councilmember List asked what the applicant will and will not be able to do. The mayor stated that he would not support the motion and feels that adding a little height would not be a bad thing. Councilmember List asked if the motion is passed, would the applicant have any other avenue to pursue. Ms. Dalton replied that this would be the end except for applying for amendments, etc. The Vice Mayor added that the other options would be cost prohibitive and suggested resolving the issue today. Councilmember Babcock feels obliged to support the Town's Comp Plan and LDC, and he does not agree with approving any request that is outside minimal variances. Discussion ensued regarding what constitutes a "minimal variance" and how the decisions are made. The argument was interrupted by the Mayor.

VOTE: The vote was taken with 2 yes and 3 no votes (Councilmembers Raymond and Babcock-yes; Mayor and Vice Mayor voted no, as did Councilmember List). The motion was not carried.

MOTION: The Vice Mayor made another motion to approve Resolution 08-48 with the following language: "the Town Council approves the applicant's request to rezone its CPD to a new CPD subject to the five conditions and no deviations set forth with specificity below." Regarding the schedule of uses, included should be the three conditions that were requested by the applicant be added to the schedule of uses; on page 3, #1, "the Town Council approves the request for Deviation 1" and the "Town Council approves the request for Deviation 2;" "Findings and Conclusions: the requested CPD...is consistent with and complies with all specific requirements, etc...;" under 2, "there is not an error or ambiguity which must be corrected;" under 3, "there exists changed or changing conditions which make approval appropriate;" under 4 "the proposed use or mix of uses as conditioned is appropriate;" under 5 "sufficient safeguards to the public interest are provided;" under 6, "all conditions are reasonably related;" under 7, the proposed use or mix of uses as conditioned meets all performance and location standards;" under 8a, "each deviation does not enhance the achievement of the objectives;" under 8b, "through each deviationwill not be preserved and promoted;" under c, "each deviation does operate to the benefit and may not operate to the detriment of the public interest;" under d, "each deviation is consistent with the Ft. Myers Beach Comp Plan." The motion was seconded by Councilmember List.

Councilmember List commented that she appreciates Councilmember Babcock's comments about the code but that they need to remember the human factor in their overall decisions. The Vice Mayor once again stated his feelings that their obligation to the community and the Comp Plan is to do what they can to protect the lodging

industry and to approve reason requests of the residents. Councilmember Babcock restated his opinion why this is not a minor change. If the applicant was permitted to build from scratch, they would be allowed six units and they now have the equivalent of 27.78 units, or four times; and now the Council has increased the density greater than five times what they are entitled to have. In addition, he said if they were to build, they would be allowed to have two stories over flood and the currently have over five, with Council now approving six. If they were to build from scratch, they would be permitted to have 30 ft.; the Council is approving 45 ft. He said that there is no way he could support this approval as a "minor deviation." Councilmember Raymond agrees with Mr. Babcock and wonders what happens next time.

VOTE: Mayor Kiker called the order and the vote was taken; the motion was carried 3-2, with Councilmembers Babcock and Raymond dissenting.
The hearing was closed at 3:34 PM.

ADMINISTRATIVE AGENDA

B. Wages & Classification Plan, Presentation by Nicholas Pellegrino, Cody & Associates

Mr. Janke stated that this plan study was done prior to his employment but that the results are now ready for council's review, he turned the meeting over to Mr. Nick Pellegrino. He referred to the copy of his report, given to the Council, and summarized classification review of the Town staff, basically comparing the job titles and duties as compared to pay scales and benefits of other similar positions throughout the area. Mr. Pellegrino recommended minimum and maximum pay scales for employees based on the market value and other factors of the human resources field. Mr. Janke added that it does not include what is considered "longevity" or step increases.

Councilmember Babcock asked if there were any questions asked regarding years of experience, etc. Mr. Pellegrino answered, again referring to his report, and explained the market value and skill set of the members polled. He further discussed his firm's approach and methods of study and continued to field Mr. Babcock's and council's queries. Council wanted to know what tool is in place for future advancements, etc. Further discussion ensued regarding the subject.

Mr. Janke added comments helpful to the council's concerns, based on performance. Merit increases were discussed and explained, as well as how all the comparisons were made.

Mr. Raymond commented that this report gives good parameters and that he would like to see this issue come before the council on a quarterly basis, a review from the Town manager, on a performance based program.

Mayor Kiker stated that the Town Manager requested permission to bring the five employees who are below the minimum, up to the standard. In addition, the report stated that almost 70% of the staff was exempt and the Mayor asked if any of those should be non-exempt instead, to be fair.

MOTION: Councilmember Babcock moved to accept the study and authorize its implementation and was seconded by Vice Mayor Acken.

Attorney Dalton added that the next meeting will feature a resolution to adopt the new personnel plan and there may be pieces of the discussion that may not be in tune with the personnel manual, so there may be wordage added to stipulate that the manual will supersede this resolution, etc.

VOTE: Motion carried 5-0.

Direction Regarding Advisory Committees' Loyalty Oath

Opened Public Comment

None

Closed Public Comment

Discussion ensued regarding the lack of interest to pursue this. Some members wanted this and some didn't. The Mayor said that the tie goes to inaction.

C. Discussion Regarding Local Newspaper Advertising

Councilmember Babcock addressed this issue and feels strongly about communication. He proposed that the Town needs to advertise, at the very least, the hearings so that the public is aware when and where to attend, if they would like to be involved. Mr. Janke added that the statutes require certain public notice but wanted to go further with newspaper notices, without just regarding these as legal notices, because of the legal language. Council discussed using both island newspapers for additional town announcements, and agree on a fixed fee, perhaps \$50.00 per notification and allow the paper the option of publishing or not, using this fee schedule. All members agreed that there should be much more exposure for volunteers to serve on committees, etc.

Opened Public Comment:

Public Comment was heard:

- Ceel Spuhler addressed the meeting and supports this idea and that both papers be utilized. She suggested that the Town include publication of the TV broadcasting times and stations.
- Mr. Carl Conley returned to address the meeting again and promoted the Island Sand Paper's advantages, especially as the ONLY island newspaper.

Closed Public Comment

MOTION: Councilmember Babcock moved that the Town manager be permitted to negotiate with both Town newspapers to allow supplemental notifications. All members agreed that cost is a major issue. Motion seconded by Mayor Kiker.

Councilmember List abstained from the vote due to conflict issues but did comment as to the importance of the island papers.

VOTE: The vote was taken and passed 4-0, with Ms. List abstaining. (*Clerk's Note: Councilmember List has filed a Form 8B MEMORANDUM OF VOTING CONFLICT*)

D. Select Date for Joint Meeting with Lee County BOCC

Tentatively scheduled for January 7, 2009. Mr. Janke will check for availability of the date and January 21 would be the second choice but Councilmember Babcock will not be available for the second choice.

E. Select Regular Monthly Workshop Date

Council discussed trying to pick a specific day and time to consistently to have workshop meeting so that these would be always on the calendar as a pre-scheduled meeting for any month. After much discussion, council decided that it should be the Wednesday after the second monthly Town Council meeting and decided that the first meeting will be Nov. 19, 2008 from 9:00 AM to noon and will setup the format for all future meetings. These will be named the "M&P Workshops" and will focus on items like CIP and budget processes, project reviews, and discuss strategies, etc.

X. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Appointments to the Advisory Committees

1) Anchorage Advisory Committee

Councilmember Babcock reported that Jim Rodwell decided to remove himself from the committee. Also, Roger Johnson put his name in for Public Safety has requested that he be considered for the Marine Resource Task Force. Discussion ensued to combine the Public Safety Task Force and the Traffic Mitigation Agency, and combining other committees.

2) Bay Oaks Advisory Committee

3) Cultural and Environmental Learning Center Advisory Board

4) Local Planning Agency

5) Marine Resources Task Force-may combine this with #6

6) Public Safety Task Force

7) Traffic Mitigation Agency

8) Lee County Metropolitan Planning Organization

a) Citizen Advisory Committee-to date, no members

b) Bicycle Pedestrian Coordinating Committee-so far, only Carrie.

c) Technical Advisory Committee—this is a standing committee with a staff member needed on this one; no one so far. Mr. Janke stated he would appoint a staff person.

Mayor Kiker asked Mr. Raymond to set up a meeting with all of the chairs of the committees and the Town Council. He also asked about "CRAB"-Community Rehabilitation Action Committee and what the function and status was. Mrs. Spuhler gave her knowledge of the committee and stated that it fell apart when the gentleman who ran it went to prison.

Charlie Loucks commented on the CRAB and possible resurrection of that committee. Attorney Dalton stated that this was covered by Ord. 00-07 the objectives are to further the welfare of the citizens of the Town in the implementation of our community as a living park as to finding a comp plan....etc.” It was decided that the committees would come back with recommendations as to who is in service for one year and who for two.

MOTION: Councilmember Raymond moved to appoint the three LPA members for two year terms. Motion was seconded by Councilmember Babcock.

VOTE: Motion passed 5-0.

Councilmember List requested permission to leave the meeting due to a prior engagement.

XI. TOWN MANAGER’S ITEMS

A. Update on TDC Funding

Mr. Janke reported that he had a request to change the trolleys changed over to buses that look like trolleys on the outside. He asked if the Council had some input into this issue, keeping or changing the trolleys. Discussion ensued regarding the upkeep and prices, etc. about the trolleys. Mayor Kiker was not in agreement with this since the new ones should be bigger and heavier and detrimental to the island ambience and roads, etc. The Council agreed that they would prefer not to change and do not want to be serviced by buses.

XII. TOWN ATTORNEY’S ITEMS

a. Update on San Carlos Project Timeline

Attorney Dalton referred to the council packet’s wherein the information is included.

b. BJH 2007-0001, Paine v. Town of Fort Myers Beach

c. BJH 2007-0002, Purtell v. Town of Fort Myers Beach

These two items have nothing to report on.

XIII. COUNCILMEMBERS ITEMS AND REPORTS

A. Goals and Objectives (no back up material)

Councilmember Raymond reported that there should be an amendment to the sign ordinance taking out the part that says the only way to appeal is if you are denied so it can be appealed whether denied or approved. In addition, he suggested making the final decision at the Town Council level and not the LPA. The Mayor asked Mr. Janke to put this matter on the next agenda as a discussion topic.

Councilmember Babcock advised that he and Mr. Janke have a meeting tomorrow with the Port Authority to discuss redesign of airspace around the beach and he asked that this also be put on the next agenda for update. He also handed out a letter from the Island Arts Foundation requesting the opportunity to use the Purple Heart Theatre for their use, to serve beer and wine. The application for that requires \$4000. Mr. Babcock would waive that fee so that this non-profit can do this without the fee. He suggested that there be a resolution in the future to be able to

waiver that fee in certain instances. Discussion ensued regarding fee waiver for special exceptions.

The Mayor had a question regarding a vicious dog, stating that this issue keeps coming back. He asked for the Council's opinion as to whether they should get together and work this pit bull issue out. Mr. Janke added that he also has been dealing with the same complaint and the importance of dealing with the problem now. Attorney Dalton added that this does need to be addressed as soon as possible and all agreed that something must be done with their contractor before it gets out of hand. The Mayor added one last point. He stated that he is uncomfortable with the fact that the Town is getting ready to spend about \$50,000 for Ms. Green's company, without first shopping around. Mr. Janke corrected that the contract is actually \$24,600, but the Mayor just requested that the Town at least talked to a few other companies. Ms. Dalton agreed that this is acceptable. The Mayor is not comfortable with not hearing what other lobbyists do. Further discussion ensued.

XIV. RECAP OF ACTION ITEMS

The Council will have a discussion of Nov. 17th regarding tasks and other subjects related to lobbyists. Prior to that, the members will send their questions to Mr. Janke to be included in the agenda items. Ms. Dalton requested a copy as well. A resolution will be done to incorporate the Wage & Classification Study as an attachment to the personnel manual, with the manual being considered at the next meeting.

The Edison Beach House Resolution is done and will be ready for the Mayor's signature asap.

The Lani Kai materials are due by the end of November and the Town's materials due by the end of December and Council has scheduled the continuation of that appeal for the second meeting of January.

There was some discussion to revisit the fee schedule and it was deferred to the first workshop.

The Alzheimer's Awareness Month Proclamation will be ready to sign tomorrow. The advisory committees are being requested to determine who will serve one and two year terms, and then it will return to Council for review and approval; except for the LPA who was approved today.

Also, the Council will review the historic landmark sign either the changing the LDC to incorporate an approval process in an appeal or the LPA would make a recommendation and Town Council would make the final decision on the issue. The Pert Authority issue will be updated by Mr. Babcock.

The Island Arts Foundation will be back for consideration of the fee waiver, after Ms. Dalton does the memo. A meeting will be set up with Lee County regarding the Vicious Dog issue. Mr. Janke will pick more potential lobbyists for consideration. The last issue was fighting the trolley change.

XV. PUBLIC COMMENT

Opened Public Comment

Public Comment was heard:

- Mr. John Pohland addressed the Council regarding the TMA. He reported that the TMA has issues with signs and trolley stops and the fact that the members are frustrated not knowing what to do and how they should do it.
- Paula Kiker addressed the meeting and said that there are many of the condo associations already restricting the types of dogs permitted. She talked about other pet restriction items. In addition, she suggested a BYOB situation for the Purple Heart Theatre. She also added that the CRAB was left off of the Action List.

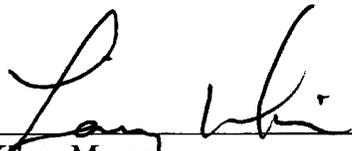
Closed Public Comment

XVI. ADJOURNMENT

Meeting was adjourned at 5:24 PM.

Adopted 12-15-08 With/ Without Changes. Motion by Acker/Graymond
(Date)

Vote: 5-0



Larry Kiker, Mayor

- End of Document

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME LIST, JOANNE BARNARD	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE FT. MYERS BEACH TOWN COUNCIL
MAILING ADDRESS P.O. BOX 2851	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY FT. MYERS BEACH, FL 33932 LEE	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED NOVEMBER 3, 2008	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joanne List, hereby disclose that on November 3, 2008:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, _____;
- inured to the special gain or loss of my relative, Husband Mark List _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows: The publisher/editor of a local weekly newspaper, The Island Sand Paper, came before our Council on 11/3/08 requesting the Town place announcements (paid) re: upcoming meetings in his publication. My husband is the Production Manager of the paper, and the revenues generated (or not) by the paper could have an impact on my husband's employment.

November 17, 2008
Date Filed

Joanne B. List
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

PARASAIL ACTIVITY LICENSE

	<u>1996 - 1997</u>	<u>1997 - 1998</u>
Patrick A. Ranalli	# 01	#01
Wind & Water Sports, Ted Primich	# 02	#02
Wind & Water Sports, Ted Primich	# 03	#03
Paradise Parasailing, Inc., Ric Smith	# 04	#04
Aqua Sports Unlimited, Bill Perry	# 05	#05
Linda Kane & Lonnie Clark	# 06	#06
Dean Kerkesner	# 07	#07

PERSONAL WATERCRAFT VENDORS LICENSE

	<u>1996 - 1997</u>	<u>1997 - 1998</u>
Kevin & Sharon Faircloth, Pink Shell	# 01	#01
Kevin & Sharon Faircloth, Best Western	# 03	#03
Chuck Kerkesner, Pink Porpoise	# 04	
Dean Kerkesner, Rebel Watersports		#04
Dean Kerkesner, Rebel Watersports	# 05	#05
Richard Calamoneri, Ramada	# 08	#08
Linda Kane & Lonnie Clark, Carslake	# 09	
Ted Primach, Lani Kai	# 10	#10
Linda Kane & Lonnie Clark, Carslake	# 11	
Chris Schaab	# 12	#12
Linda Kane & Lonnie Clark, Carslake	# 15	#15
Tom Albright	# 16	#16
Ted Primich	# 18	#18
Chris Webber, Sandbar	# 19	#19
Chris Webber, SandPiper	# 20	#20
Bill Perry, Holiday Inn	# 22	#22
Linda Kane & Lonnie Clark	# 30	
Linda Kane & Lonnie Clark	# 31	



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is 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 *one ORIGINAL paper copy, eleven (11) copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: DCI 2014 - 0004 DATE: 6-11-14

Site Address: 830 Estero Blvd, Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-W3-00400.0010

Applicant: Larry Yax Phone: (239) 463-1530

Contact Name: Matthew Burt Phone: (239) 463-1530

Email: edisonbeachhouse@gmail.com Fax: (239) 765-9430

Current Zoning District: CPD

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6 du/ac Platted Overlay: YES NO

ACTION REQUESTED

- Special Exception
- Variance
- Conventional Rezoning
- Planned Development Commercial Residential
- Master Concept Plan Extension
- Appeal of Administrative Action
- Vacation of Platted Right-of-way and Easement
- Other - cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

- PH-A
- PH-B
- PH-C
- PH-D
- PH-E
- PH-F
- PH-G
- attach on separate sheet

PART I - General Information

A. Applicant*: Larry Yax Phone: 239-463-1530

**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: 830 Estero Blvd. Ft Myers Beach, FL 33931

Email: edisonbeachhouse@gmail.com Fax: 239-765-9430

Contact Name: Matthew Burt Phone: 239-463-1530

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Owner* | <input type="checkbox"/> Land Trust* | <input type="checkbox"/> Partnership* |
| <input type="checkbox"/> Corporation* | <input type="checkbox"/> Association* | <input type="checkbox"/> Condominium* |
| <input type="checkbox"/> Subdivision* | <input type="checkbox"/> Timeshare Condo* | <input type="checkbox"/> Contract Purchaser* |
| <input type="checkbox"/> Authorized Representative* | <input type="checkbox"/> 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: Matthew Burt Phone: 239-463-1530

Address: 830 Estero Blvd. Ft Myers Beach, FL 33931

Email: edisonbeachhouse@gmail.com Fax: 239-765-9430

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: _____

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: Reso. 08-48
 - Extension/reinstatement of Master Concept Plan. List project number: _____
 - 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 (individual or husband and wife)
 - Name: _____ Phone: _____
 - Mailing Address: _____
 - Email: _____ Fax: _____

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 4-1
- Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)
- For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 24-46-23-W3-00400.0010

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
NA	

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
Larry Yax, 830 Estero Blvd Ft Myers Beach, FL 33931	50%
Betty Lou Yax, 830 Estero Blvd Ft Myers Beach, FL 33931	30%
Justin Yax, 12900 Lake Ave #426 Lakewood, OH 44107	10%
Jason Yax, 2744 Quarry Lake Dr. Columbus, OH 43204	10%

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
NA	

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
NA	

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
NA	

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
_____	_____
_____	_____
_____	NA
_____	_____
_____	_____
_____	_____

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.

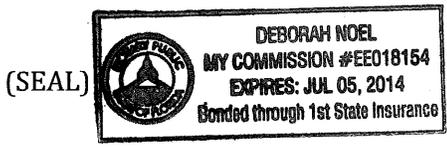
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

[Handwritten Signature]
Signature

Larry Yax
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 19th of May '14 (date) by Larry Yax (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.



[Handwritten Signature: Deborah Noel]
Signature

Deborah Noel
Printed Name

PART V - Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00400.0010

Property Address: 830 Estero Blvd, Ft Myers Beach, Fl 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 5-1.

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 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 101 feet

Depth (please provide an average width if irregular in shape) 230 feet

Frontage on street: 101 feet. Frontage on waterbody: 100 feet

Total land area: 23,230 acres square feet

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

From Sky bridge, turn right on to Estero Blvd. Drive roughly 1/4 mile down Estero Blvd. We are located on the left (Beach side) of Estero Blvd across the street from 7-11 and next door to public parking lot (Lynn Hall Park)

Attach Area Location Map as Exhibit 5-3

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 5-4.

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

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 5-6.
- Attach a map showing the surrounding property owners as Exhibit 5-7.
- Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

- | | |
|---|--|
| <input type="checkbox"/> Low Density | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Boulevard | <input type="checkbox"/> Wetlands |
| <input checked="" type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Platted Overlay |

H. Zoning (see official Zoning Map):

- | | |
|--|--|
| <input type="checkbox"/> RS (Residential Single-family) | <input type="checkbox"/> CF (Community Facilities) |
| <input type="checkbox"/> RC (Residential Conservation) | <input type="checkbox"/> IN (Institutional) |
| <input type="checkbox"/> RM (Residential Multifamily) | <input type="checkbox"/> BB (Bay Beach) |
| <input type="checkbox"/> RPD (Residential Planned Development) | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marine) | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> CO (Commercial Office) | <input type="checkbox"/> SANTOS |
| <input type="checkbox"/> CB (Commercial Boulevard) | <input type="checkbox"/> VILLAGE |
| <input checked="" type="checkbox"/> CR (Commercial Resort) | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> CPD (Commercial Planned Development) | |

PART VII

AFFIDAVIT

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

I, Larry Yax (name), as owner (title) of First Central Investment Corp. (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 County 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 Lee County 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.

First Central Investment Corp
Name of Entity (corporation, partnership, LLP, LLC, etc)

[Signature]
Signature

Owner
Title

Larry Yax
Typed or Printed Name

5-16-14
Date

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 19th of May '14 (date) by Larry Yax (name of person providing oath or affirmation), who is personally known to me or who has produced _____ (type of identification) as identification.



[Signature]
Signature

Deborah Noel
Printed Name

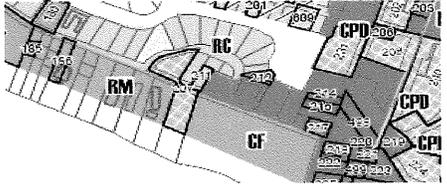
Legal Description:

- Lot 1 of that certain subdivision known as Island Shores, unit No. 1, 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 9, page 24

Case # DCI 2014-0004
Planner _____

Date Received 6-11-14
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

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.

Project Name: <u>Edison Beach House</u>
Authorized Applicant: <u>Mathew Burt</u>
LeePA STRAP Number(s): <u>24-46-23-W3-60400,0010</u>

Current Property Status: <u>CR</u>
Current Zoning: <u>CPD</u>
Future Land Use Map (FLUM) Category: <u>Mixed Residential</u>
Platted Overlay? <u>yes</u> <input checked="" type="checkbox"/> no <input type="checkbox"/> FLUM Density Range: <u>6 du/ac</u>

Requested Action:

<input type="checkbox"/> DRI (with rezoning)
<input checked="" type="checkbox"/> Planned Development (also check below)
<input type="checkbox"/> Rezoning from: _____ to: _____
<input type="checkbox"/> Amendment to Master Concept Plan/attendant documentation

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

The Edison Beach House is a conforming property that complies with all land development codes. Recently, the town has adopted a few new ordinances relating to PLVL & PAL licenses and the ability to transfer these licenses. With the dwindling amount of conforming properties, we feel this property will be a great fit for offering these types of services. It will also provide hotel guests with a great & memorable vacation. We believe this property exceeds all performance and locational standards set forth by the Fort Myers Beach Comprehensive Plan.

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.

NA

E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

Our proposed Zoning change complies with the guidelines for decision making as follows:

- It has been noted that the public in the proposed area has inquired about the availability of resort activities. This location will provide ease of use and convenience to the public with expanded amenities.
- This request meets all performance and location standards set for by the proposed use.
- Urban services such as public areas, facilities, and resort accommodations are and will be available to serve the proposed land use.
- The resort accessory use will be compatible with uses and not cause damage, hazard, or nuisance to persons or property.

Follows:

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.

←

- The location of request does not place an undue burden upon existing transportation or other services and facilities.

NA

