



**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)  
MINUTES**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, June 10, 2014**

**I. CALL TO ORDER**

Meeting was called to order at 9:02 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer  
Al Durrett  
John Kakatsch  
Jane Plummer  
Joanne Shamp  
James Steele – excused.  
Hank Zuba

LPA Attorney: Derek Rooney  
Staff Present: Josh Overmyer, Planning Coordinator

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION – Chair Zuba**

**IV. MINUTES**

A. Minutes of May 13, 2014

**MOTION:** Vice Chair Shamp moved to approve the Minutes for May 13, 2014 as presented; second by Ms. Plummer.

Vice Chair Shamp noted a typographical error on Page 7 - "...creation of an ascending area..." to "... a sending area...".

**VOTE:** Motion approved; 6-0 (Mr. Steele was excused).

**A. CMP2013-00001 Seagrape Subdivision**

Chair Zuba opened the Public Hearing.

Matt Uhle, Attorney representing the Applicant, noted the Staff Report was thorough and accurate and offered an overview of the purpose and the mechanics of the Applicant's request. He described the subject property as 40 platted lots in the Seagrape subdivision. He noted the subject property was identified on the Future Land Use Map (FLUM) as wetlands; however, it was not completely a wetland. He claimed in 2010 the South Florida Water Management District (SFWMD) completed a jurisdictional analysis of the subject property revealing that 27% was uplands and 12% was 'other surface waters'. He discussed the jurisdictional analysis performed by SFWMD; and the Applicant's filing of a 40 Minimal Use Determinations (MUD) (one for each platted lot) and the denial by the LPA; and the appeal to Town Council. He explained how the Applicant postponed the appeal to Council pending the outcome of a Comprehensive Plan Amendment using transfer of development rights (TDRs). He talked about TDR programs in general, and stated that if the TDRs were approved and properly implemented that the Town would receive title to all 40 platted lots at no cost; therefore, the residents would be assured there would be no building on the subject lots. The proposal would require the Applicant to identify the receiving areas through the development zoning process through a public hearing process. He highlighted the following items as they pertained to the subject proposal:

- The subject proposal did not permit "anything to go anywhere"; it was limited in terms of receiving areas and did not have a commercial component.
- The subject proposal was not viewed as "an embryo for some sort of an island-wide system" or a "broader process".
- The receiving areas would be identified solely through the planned development zoning process which meant public hearings, notice, etc.; and the Town would not be obligated to approve any particular application that came in front of them and this was a substantial concession on the Applicant's part.
- The 40 units were consistent with the MUDs the Applicant applied for and that they clearly legally entitled to under the criteria in the Comprehensive Plan.
- Conservation easement on a portion of the property – Town does not own the conservation easement rather it was owned by the State of Florida DEP and it did not prohibit all development on the property. He noted written authorization from the owner was required for development on the easement.
- 'Double-dipping' by including density included in the Seagrape Bay condominium – the lots included in the Jameson property that were initially contemplated to be part of that condominium were part of the Phase III which was never built and was used as the 'open space' for a hypothetical phase that was never constructed.

Attorney Uhle explained the Applicant believed their proposal would benefit all the parties and requested approval as recommended by Town staff.

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Mr. James Jameson, Applicant, offered personal information and a brief outline of his work experience in the way of an introduction. He described his involvement with the acquisition of the subject property and what he saw as benefits to the Town and the residents if the proposal was approved. He stated he would not build on the subject property; and that 6.5 acres would be handed to the Town in the same state as which he purchased the property.

Vice Chair Shamp questioned the subject property details as “Town of Fort Myers Beach, Vacant Residential” for 2008; however, in her research of the Lee County records the codes indicated ‘sewage disposal, waste lands’ and ‘mangrove’ for each year they showed (2007-2014).

Attorney Uhle explained that particular change was not done at his client’s initiative and he did not know how the classification changed from vacant residential to ‘sewage disposal, waste lands’.

Discussion ensued regarding the County’s current valuation of the subject property.

Vice Chair Shamp noted Lee County’s TDR program was ‘one unit per five acres’ for wetlands.

Attorney Uhle acknowledged the County’s program was different and explained his client was proposing something different which was necessary due to the platted lots.

Discussion ensued regarding the classification of ‘wetlands’; the County’s program; platted lots versus un-platted lots/acreage; Collier County’s TDR programs as it pertained to urban fringe and agricultural; and whether or not the proposed TDRs were unique.

Mr. Jameson explained the low property taxes mentioned earlier were for an adjoining piece of property that belonged to the Mango Street apartments; and added the subject property from 2002 until a year ago was classified on his tax bills as “vacant residential”.

Attorney Uhle stated the subject property was platted in 1919.

Chair Zuba questioned if it was Attorney Uhle’s contention that 40 units could be built on the subject property.

Attorney Uhle reported it was his contention that the Comprehensive Plan contemplated that each unit was entitled to a Minimum Use Determination.

Chair Zuba questioned the Applicant’s belief that the conservation easement could be done away with easily.

Attorney Uhle reviewed his views that the conservation easement could be done away with easily since the Town did not own the subject easement and it belonged to the DEP [which covered about half of the platted lots].

Discussion ensued regarding the conservation easement.

Planning Coordinator Overmyer presented comments on behalf of the Town of Fort Myers Beach for the CMP2013-00001 Seagrape Subdivision request. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site.

- Policy 4-C-8: The density of residential or hotel/motel units being transferred was based upon the allowable density levels in the category from which the density was being transferred; the transfer was approved through the planned development rezoning process; and binding permanent restrictions were placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.
- New Policy 6 - Staff recommended the transfer was to be approved through the planned development rezoning process for the sending and receiving parcel; and the application of the TDR Overlay on the Future Land Use Map shall be an alternative to the process described in Policy 4-B-15.
- Policy 4-B-15 (Proposed)
  - The Transfer of Development Rights (TDR) Sending Area Overlay is an environmentally sensitive area consisting of 40 platted lots of record within the Seagrape Subdivision.
  - Dwelling units may be transferred from lots within this Overlay area to any parcel in the Pedestrian Commercial, Boulevard, or Mixed Residential Future Land Use Map categories within the Town of Fort Myers Beach, regardless of the maximum density that would otherwise be permitted by the Future Land Use Map category for the receiving parcel, upon compliance with the procedures set forth below in order to create a net environmental benefit to the Town.
  - Upon conveyance of a lot or lots in the Transfer of Development Rights Sending Area Overlay by warranty deed to the Town which deed shall contain a restriction that the property shall not be developed.
  - The Town will issue a TDR certificate to the property owner for an equal number of TDR units. The TDR certificate to the property owner for an equal number of TDR units. The TDR certificate is assignable or transferable through the process described below.
  - TDR receiving areas may only be designated through the use of the planned development zoning process for the receiving parcel.
  - TDRs may be used to transfer either residential or hotel/motel units. The number of hotel/motel units which may be transferred will be computed using the hotel/motel density equivalency factors in the Land Development Code for the receiving parcel.
  - Rezoning applications which contemplate the use of TDRs must identify the number of TDRs requested and must include either TDR certificates or written authorization from a property owner in the TDR Sending Area Overlay authorizing the use of the requested number of TDR units.
  - All planned development zoning approvals which contemplate the use of TDRs must specify the number of approved TDR units.
  - Development order applications for projects which include the use of TDRs must include valid TDR certificates for the requested number of TDR units.

He indicated that the relevant Comprehensive Plan policies were:

- Policy 5-A-5: due to the physical constraints of its coastal location, the Town of Fort Myers Beach commits to a future policy of no increase in the net development capacity (island-wide) that would be allowed by the Fort Myers Beach Comprehensive Plan.
- Policy 6-B-5: development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to scenic values for the benefit of future generations.
- Policy 6-B-9 (Acquisition of Additional Sites): the Town would strive to expand opportunities for conservation and public appreciation of natural resources through acquisition of additional areas with rare or unique ecological or botanical features or which provide access to such areas.
- Objective 6-D (Wetlands): preserve all remaining wetlands; protect them from further degradation; and improve their condition and natural functions.

He reported staff recommended that Town Council create a Policy 4-B-15 and amend existing Policy 4-C-8 concerning transfer of development rights; and the Future Land Use Map should also be amended to designate the subject property as a TDR Sending Area.

Mr. Kakatsch questioned the potential use of the subject property if acquired by the Town.

Planning Coordinator Overmyer explained the potential uses for the subject property would depend upon a decision by Town Council.

Discussion was held concerning potential uses for the subject property if acquired by the Town.

Mr. Durrett questioned if the TDRs could be utilized in Lee County.

Planning Coordinator Overmyer explained the TDRs could only be used in the Town of Fort Myers Beach and were not transferable outside the Town's jurisdiction.

Vice Chair Shamp questioned the density for wetlands.

Planning Coordinator Overmyer reported the Comp Plan density was one unit per 20 acres.

Discussion was held concerning the 1984 FLUM classification of wetlands for the subject property; the wetlands designation in the Comprehensive Plan by the Town; transfer of density and zoning districts; Policy 4-C-8; and the process of adopting small-scale Comprehensive Plan amendments per State statute as it pertained to text changes.

LPA Attorney Rooney noted there could be a text change corresponding to the small-scale amendment.

Discussion continued regarding the process of adopting small-scale Comprehensive Plan amendments per State statute as it pertained to text changes.

Planning Coordinator Overmyer noted the transfer of density could go to Pedestrian Commercial, Boulevard or Mixed Residential categories.

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Discussion ensued concerning the potential transferable density to the various Future Land Use Map categories [Pedestrian Commercial, Boulevard or Mixed Residential]; and staff reviewed the background of the subject request such as but not limited to the Applicant's filing of a MUD, and the conservation easement.

Ms. Plummer discussed the existing platted map of the subject property and the potential development of the subject site.

Planning Coordinator Overmyer reviewed how Town Council would have the ability to approve setbacks, height, and other provisions of a project through planned development rezoning.

Discussion was held regarding the LPA's denial of MUDs on the subject property in 2012.

Vice Chair Champ pointed out there were easements other than the FDEP easement on the subject property.

Discussion was held concerning 'proximity', receiving areas, and sending areas.

Planning Coordinator Overmyer reviewed areas within the Pedestrian Commercial, Boulevard or Mixed Residential districts in the Town where the potential transferable density could be used.

Discussion continued regarding 'close proximity'; and the 'hotel/motel multiplier' as it related to unit size.

Public Comment opened.

Daniel Hughes, resident, explained that most of his questions were already raised. He discussed his belief that some of the assumptions were erroneous such as but not limited to the right to develop 40 units, the conservation easement, and the 40 units under the MUD. He indicated his view that the LPA was being asked to consider an item that was a moot issue. He discussed the 'proximity' matter and questioned the propriety/legality of a Comp Plan amendment that dealt with one specific property owner's property and not a general policy.

Tom Babcock, resident, echoed the comments of Mr. Hughes. He discussed his view that the issue was extremely important to the Town; that before a small-scale Comp Plan amendment the Town should create a true TDR policy; that legal encumbrances should be removed before any discussion of a TDR; and the TDR policy should not be established based upon one parcel. He requested the LPA deny the Applicant's request and move forward with a very restrictive TDR policy.

Jay Light, resident, reported he would prefer to see the Town own the subject property and do nothing to the property.

Annie Babcock, resident, noted the matter impacted the entire island. She claimed the request did not address specific issues in a written form; and discussed her view on TDRs and the need for an overall TDR policy. She reviewed her research on TDR programs; Lee County's TDR program; reduction of development in high hazard zones; designated receiving units; and reducing coastal development on barrier islands (high hazard zones). She questioned if a TDR policy should even be used on a barrier island.

Pete Yeatman, resident, explained why he did not support approval of the Applicant's request.

Tracey Gore, resident, reported the previous owner of the subject property had requested a Zoning Verification Letter and received 'no density', and then in turn sold the property to Mr. Jameson. She noted an attempt in 2003 to build on the subject property which was denied; and during that attempt the property owner did try to abate the conservation easement but failed. She reported in 2010 the property owner requested a determination letter from SFWMD for the subject property and she reviewed highlights of the letter such as but not limited to 3.85 acres of the 6.25 acres were wetlands. She added that the property owner had advertised the individual lots for sale on the subject parcel. She mentioned that all the criteria listed within the LDC had to be met for transfer of density. She requested the LPA deny the request since it was not in the public's interest.

Jack Green, resident, stated he concurred with the previous speakers and supported their comments.

David Zak, resident, reported the property owner had been advertising property at 2500 Estero Boulevard as having the capability of containing a 120 unit hotel. He suggested the Applicant should go ahead and obtain the development order(s) necessary for the subject property and then come back to the Town to discuss transfer of development rights. He pointed out the subject property was platted in 1919 and there was no dedication. He asked for denial of the applicant's request.

Planning Coordinator Overmyer reported he received emails from the public as follows and read the contents of the emails:

- Dave & Bonnie Ennis - asked for denial of the applicant's request.
- John & Linda Vredenburg - asked for denial of the applicant's request.
- Tim & Sara Horvatich - asked for denial of the applicant's request.

Public Comment closed.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – discussion with Applicant; Mr. Kakatsch – discussion with Applicant; Chair Zuba – discussion with Applicant; Mr. Steele – was excused; Ms. Plummer – discussion with Applicant; Vice Chair Shamp – see letter she submitted and site visit; Mr. Bodenhafer – discussion with Applicant.

Vice Chair Shamp made a recommendation of denial to the LPA for the CMP2013-00001 Seagrape Subdivision request and to make a recommendation to Council that they not approve the request. She discussed the basis for her recommendation such as but not limited to issues with proximity, not being in the best interest of the residents, and the allowable density levels.

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Mr. Durrett questioned if the Town currently owned any TDRs.

Planning Coordinator Overmyer responded in the negative.

Chair Zuba discussed why he did not support the recommendation by staff.

Mr. Kakatsch explained he preferred to see just 40 units approved for transfer and to see where they were going; and how the Town appeared to be in a 'redevelopment' stage, the need for development, and a tax base.

**MOTION:** Mr. Bodenhafer moved to recommend denial of the CMP2013-00001 Seagrape Subdivision request and to make a recommendation of denial to Council and include the Findings of Fact; and

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

1. The proposed amendment to the Town Comprehensive Plan DOES NOT qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:
  - a. the proposed amendment DOES involve a use of 10 acres or fewer; and
  - b. the cumulative annual effect of the acreage for all small scale developments adopted by the Town of Fort Myers Beach WILL NOT exceed a maximum of 120 acres in a calendar year; and
  - c. the proposed amendment DOES involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.
  - d. the property that is the subject of the proposed amendment IS NOT located within an area of critical state concern; and
2. It IS NOT in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change IS NOT necessary to provide for orderly future growth of the community, for the following reasons:

- a. The proposed amendment will likely have a NEGATIVE impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: increases impacts in VE flood zone by moving density from AE flood zone; and
  - b. increases intensity in VE flood zone; and
3. It is further recommended that, in accordance with the requirements of Section 163.3187, Florida Statutes, if this proposed change to the FLUM is made by the Town Council, that the Town Council direct the Town Staff to send copies of the notice of hearings and ordinance containing the amendment to the Town Future Land Use Map to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

**SECOND:** Vice Chair Shamp.

**VOTE:** Motion approved; 5-1 (Mr. Steele was excused; Mr. Kakatsch dissenting).

Public Hearing closed.

**B. DCI2013-0002 Matanzas Inn CPD Amendment**

Chair Zuba opened the Public Hearing.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Chair Zuba – site visit; Mr. Steele – was excused; Ms. Plummer – Applicant called her to see if she had any questions; Vice Chair Shamp – site visit; Mr. Bodenhafer – site visit with Applicant.

LPA Attorney Rooney swore in the witnesses.

Gerald Murphy of Murphy Planning offered a brief overview of his education and background as it pertained to planning and law. He stated he was “pretty much” in agreement with the Staff Report except for one recommendation of denial for a deviation #6 on a technical basis [parking space]. He gave presentation on the request for the Matanzas Inn Resort and reviewed the following:

- A number of small requests regarding the amendment of an existing CPD – to remove the Old San Carlos parcel; to bring in a platted lot that was proximate to the existing parcels; to redevelop an area [indicated on the display screen] into parking and transfer the four dwelling units to the main parcel and convert those to guest units for hotel/motel purposes at the conversion factor of 3 guest units per 1 dwelling unit.
- Deviation #4 to be continued from the previous resolution to allow the guest units to have a 1,000 square foot average.
- Revise the phasing plan according to importance dictated by the market.

- Elevations (left, rear, right, front), Phase A where the office currently existed, Phase B2, Phase C, and Phase D.
- Deviation from Chapter 30 to adopt a unified sign package, signs on the property were not in conformance with the Town's sign plan, and requested sign package should be adopted for the resort.
- Deviation to carry forward the parking deviations that the property received at approximately the time of the Town's incorporation; he recommended language for Deviation #6 – add language indicating “with dimensional regulations allowing 90° parking spaces, 16’ deep, and 8.5’ wide, and a 2-way drive aisle 19’ wide”.

Vice Chair Shamp questioned if ‘open-container’ was proposed for the entire property.

Gerald Murphy responded in the affirmative.

Vice Chair Shamp questioned why the request included ‘open-container’ for the parking lot area.

Gerald Murphy explained the Applicant was attempting to redevelop the property as a ‘composite resort’. He noted the parking was proposed to move forward away from the canal and most of the current uses for ‘open-container’ areas fronted the canal.

Vice Chair Shamp questioned Mr. Murphy regarding conditioning approval with no alcohol allowed in the parking area.

Mr. Murphy stated he would be open to that condition; however, he suggested enforcement might be complicated. He explained they were not requesting any changes to the uses for the docks from what had been previously approved.

Discussion was held the density multiplier; commercial uses as allowed (Exhibit G); potential second story within FEMA regulations; deviation #6 from Town standards; provisions for landscaping improvements and open space; and deviation #2 for use of canal and street.

Vice Chair Shamp questioned if there was consideration given to mitigate impact into the residential area from the commercial effects.

Mr. Doug Speirn-Smith, owner of Matanzas Inn, explained they worked to orient noise away from the neighbors. He added that they had an indoor/outdoor restaurant with covered and uncovered music; and were committed to keeping “*it modest*”. He noted that during the review process the staff had requested he increase buffers along Crescent Street and to set the buildings away from Crescent Street a little bit to allow for flexibility in the right-of-way and had taken that into account to meet the standards of the downtown core.

Ms. Plummer questioned if the subject property would have a sidewalk (Condition #14).

Mr. Murphy noted the sidewalk was in the Town's long-range plan and when it occurred there would be space for that sidewalk.

Discussion was held regarding Condition #12.

Planning Coordinator Overmyer presented comments for the DCI2013-0002 Matanzas Inn CPD Amendment request on behalf of the Town of Fort Myers Beach. He displayed an aerial view of the property and indicated the location of the subject site. He reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- Remove a parcel of land (the 'Old San Carlos Parcel') from the existing CPD;
- Include a platted lot ('Lot 15') into Parcel B;
- Convert the 4 existing dwelling units (located on Lot 15) to 12 hotel/motel guest units;
- Parking parcel – remove three spaces from the prior plan (Parcel B); providing 22 spaces in Parcel C;
- Pre-disaster build-back to mitigate storm loss before the storm occurs;
- Restaurant – some enclosed and some patio portions;
- Standards for approval of a planned development rezoning found in Section 34-85 of the LDC regulations:
  - *a. Whether there exists an error or ambiguity which must be corrected.*  
Staff does not find that any errors or ambiguities exist surrounding the subject property and its zoning category that require correction; except on parcel needed to be removed from the CPD boundaries.
  - *b. Whether there exist changed or changing conditions which make approval of the request appropriate.*  
The changing condition that exists on the subject property which supports the applicant's request for amending the CPD is the addition and sale of property. The 'Old San Carlos Parcel' was sold to a separate owner in the spring of 2013 and is now being considered as part of a separate zoning action. Additionally, the property owner has acquired Lot 15, located immediately adjacent to the current PARCEL C (see MCP attached as *Exhibit H*), and is requesting to add that land area to the CPD.
- Amending the existing Matanzas Inn CPD with the specifics of this request will have no impact on the intent of Chapter 34.
- As discussed in the analysis section of the staff report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within the Pedestrian Commercial future land use category and the Pre-Disaster Buildback, Hazard Mitigation and Floodproofing policies in the Comp Plan.
- The request meets or exceeds all performance and locational standards set forth for the proposed use.
- The subject property is currently a functioning Inn and restaurant, urban services are available and adequate for the proposed changes.
- The request will protect, conserve, or preserve environmentally critical areas and natural resources.

- 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 CPD amendment will allow the property owner additional flexibility in phasing the project and the construction of new flood compliant buildings. The buildings will be required to meet the commercial design standards and all other applicable codes. The requested uses are those found in the DOWNTOWN zoning district.
- The impact of the proposed amendments to the transportation network will be evaluated at the time of revision to the Development Order.
- LDC Section 34-216 and the request of the CPD amendment included:
  - Remove a parcel of land (the ‘Old San Carlos Parcel’) from the existing CPD
  - Include a platted lot (‘Lot 15’) into PARCEL B
  - Convert the 4 existing dwelling units (located on Lot 15) to 12 hotel/motel guest units
  - Revise the phasing plan for expansion of the restaurant and redevelopment of the hotel/motel, add a phase B1 that proposes a second story on the western half of the southernmost hotel/motel building, and clarify that the phases of redevelopment may proceed in any order depending on the market
  - Deviation from the requirements of LDC Chapter 30 to adopt a unified sign package for the entire resort.

He reported that staff recommended that the mix of uses on the subject property continued to remain appropriate at the subject location and that staff found that the conditions, as recommended, were sufficient safeguards to the public interest. He added that staff conducted a review of all previously approved conditions from former approvals by Town Council; and the conditions of approval included with the Staff Report reflected staff’s goal to simplify recommended project approvals. Staff found that all conditions to the recommendation of **approval** were reasonably related to the proposed project’s impacts on the surrounding neighborhood; and that the proposed amendments to the existing Matanzas Inn CPD are consistent with the Town’s Comprehensive Plan. He stated staff recommended **approval** with 10 conditions and 15 deviations and added staff was amenable to the additional language to Deviation #6 as proposed by Mr. Murphy (Deviation #6 – add language indicating “*with dimensional regulations allowing 90° parking spaces, 16’ deep, and 8.5’ wide, and a 2-way drive aisle 19’ wide*”).

Discussion was held concerning the dimensions in the original CPD average for the guest units; consideration of a conceptual landscape plan; and the landscape buffers depicted on the Master Concept Plan.

Public Comment opened.

Gayle Manor, resident, explained she would be opposed to approval of the ‘open-container’ for all of the subject property since there was a dock that went halfway down the canal. She noted her concern about any member of any board referring to someone’s home in an offensive manner.

Attorney Uhle distributed information to the LPA.

Jim Shenko, resident, indicated he did not oppose change. He addressed the ‘25% enclosed underneath’ and that he did not mind using that space for the office or storage but was concerned about accessory

uses. He described his concerns with the ‘open-container’ for the pool area and how it could impact neighboring residential; the newly constructed chickee hut; the music area and potential noise issues; and an electric guitarist located on the seawall who plays on Sundays. He reported, as a general rule, Matanzas Inn was a good neighbor; however, he had three issues with what was being proposed:

1. Noise
2. Setbacks
3. Density

He offered some historical background on the subject property; and continued to review his concerns regarding noise issues and the location of the pool as it pertained to impacting the surrounding residential neighborhood with the subject site. He recommended no outdoor entertainment at the Matanzas Inn.

Attorney Uhle, representing Mr. Shenko, recommended and reviewed some changes to the Staff Report:

- Restaurant – go back to what was proposed in 2003 which would be to require all of the entertainment to be done within a fully enclosed building or if barring that, enclose the portion that abuts the single-family area.
- Hotel – concerns regarding consumption of alcohol around the pool; prefer to see restrictions regarding the use of the pool after 9:00 p.m.; no COP or sales of alcohol in the building closest to his client’s property. He addressed the increasing intensity of the property; the changing mass of the building.

Nancy Witham, resident, echoed the comments by the previous speakers. She discussed her concerns regarding ‘large permanent structures’ constructed on a canal facing houses; traffic congestion, and problems with noise.

Tracey Gore, resident, talked about ‘recasting’ deviations. She noted that Matanzas Inn was a good commercial neighbor; however, she explained her issues regarding noise and setback at the subject property. She questioned a photograph of the subject property; and offered comments regarding ‘enclosed dining’. She addressed the narrative of the Comprehensive Plan amendment and noted that the issues of noise and setback were impacting residential areas.

Public Comment closed.

Ms. Plummer questioned the setback on the new construction.

Planning Coordinator Overmyer reported on the Master Concept Plan the setback for Phase ‘A’ provided 15’ to the seawall, 17.3’ as measured to the property line. He added the seawall was built a few feet into the deeded property and nothing could be backed up without losing parking spaces. He noted the previous Master Concept Plan was Exhibit ‘H’ and for the existing office there was a 15’ setback and for the motel it was 21.3’.

Chair Zuba recognized Mr. Murphy in the audience to address public comments.

Mr. Murphy reported the new chickee hut had been permitted and was an allowable structure on the property; and expressed his thoughts on noise issues not only at the subject site but throughout the Town which he felt needed to be addressed legislatively. He added the Applicant was open to LPA suggestions to Town Council for a buffer.

Vice Chair Shamp questioned if there were hours of use for the pool.

Mr. Speirn-Smith responded in the affirmative; and added he believed the hours were from 10:00 a.m. to 10:00 p.m. He noted the new chickee hut was used for dining 90% of the time, and he intended to install more on the subject property as 'gathering places'.

LPA Attorney Rooney questioned if it was the Applicant's request to transfer density from one parcel to another or were they looking to 'kill and combine the lots' and essentially aggregate the density on a single parcel.

Mr. Murphy responded they were aggregating the parcels, if approved; and removing the parcel that was no longer under unified control and then transferring within the property the density currently existing on the new parcel to Parcel 'A' and then ask for the multiplier for dwelling units to guest units to be applied and the deviation for the square footage.

LPA Attorney Rooney explained the purpose of his question to the LPA and pointed out the LPA may want to consider a recommendation to Council that they address the Findings on each issue before approving the overall CPD.

Discussion was held on aggregating the site and the possible elimination of parcel lines.

Mr. Durrett indicated his support of the proposed request; however, he noted his concerns regarding noise. He asked if the Applicant would consider enclosing their music.

Mr. Murphy responded in the affirmative; but pointed out that the majority of the restaurant was outside.

Discussion ensued regarding the issue of outdoor noise/music and buffers; the lack of addressing buffering of a canal in the LDC; the majority of the restaurant located outside; mitigations for noise (i.e. separation of hours for indoor/outdoor entertainment, format of entertainment); and the Matanzas Inn as a good neighbor.

Vice Chair Shamp outlined her five concerns with the CPD request:

1. COP not to be on the entire parcel; currently a Restaurant COP existed at the site.
2. Same intensity to be approved as previously.
3. Noise/entertainment – specify locations.
4. Specify commercial uses.
5. Signs deviations requested.

Chair Zuba discussed potential difficulties regarding how to impose restrictions concerning noise/entertainment issues; commented that he agreed with Vice Chair Shamp's concerns about COP, parking, and density/intensity of uses.

Vice Chair Shamp explained the use specification should state use for 'storage and office'.

Chair Zuba indicated he did not have the same concerns about the signs as Vice Chair Shamp.

Ms. Plummer concurred that COP should not be allowed in the parking lot. She questioned the hours of operation for the neighboring commercial establishment; and offered suggested hours for the pool (closing at 10:00 p.m.), outdoor COP and serving (no serving or entertainment after 10:00 p.m.); no alcohol at the pool after 10:00 p.m. She explained she supported a retail space for the first floor space.

Discussion ensued regarding COP at the pool.

**MOTION:** Vice Chair Shamp moved to recommend approval of the DCI2013-0002 Matanzas Inn CPD Amendment request subject to the 10 conditions and 15 deviations.

LPA Attorney Rooney offered wording for the motion as follows:

*“Approve an amendment to the Matanzas Pass Inn CPD approving the deviations subject to conditions listed in the staff report and based on the recommendations and testimony provided during the Public Hearing finding that the Applicant has met all required Findings of Section 34-85 and 34-216 of the Land Development Code.”*

He added the LPA could then decide if they wanted to include the Applicant's oral amendment to deviation #6, and then decide which deviations the LPA specifically wished to cancel or add.

**AMENDMENT:** Motion maker amended the motion to include the recommended language by LPA Attorney Rooney and Policy 4-C-8 of the Comprehensive Plan for the transfer of development density; and the changes as follows:

- Deviation #4 - Deviation from LDC Section 34-1803(a)(1) to allow guest units to average ~~1000~~ 800 with a maximum of 1,200 square feet in compliance with the proposed Schedule of Uses.
- Deviation #6 - Deviation (recast from previously approved deviations) from the provisions of LDC Chapter 34, Division 26, Parking: LDC Sections 34-2015 (location and design) and 34-2016 (dimensional requirements; delineation of parking spaces) to allow the parking plan delineated on the MCP - add language from the Applicant indicating “with dimensional regulations allowing 90° parking spaces, 16' deep, and 8.5' wide, and a 2-way drive aisle 19' wide”.
- Deviation #9 - Total commercial identification sign area not to exceed 139 square feet total. Other permitted signs not requiring a permit as provided in LDC Chapter 30 or otherwise permissible, allowed.
- Recommended Conditions of Approval #2 – Allowable uses are limited to the approved Schedule of Uses – See attached *Exhibit G*; add for downstairs be limited to storage and office.

- Recommended Conditions of Approval #4 – All outdoor entertainment must cease by 10:00 p.m. – and add entertainment should be in the public spaces but not the parking lots.
- Recommendation to Council that the COP would be limited to the restaurant and outdoor deck area or grass areas and not at the pool or parking lot and insure they are enforced.

**SECOND:** Ms. Plummer.

Ms. Plummer requested that ‘retail’ be included in the schedule of uses for the first floor area.

Discussion was held concerning the allowable uses for the downstairs area.

**AMENDMENT:** Motion maker amended the motion - Recommended Conditions of Approval #2 – to add *for downstairs be limited to storage, office, and resort-accessory uses.*

Discussion ensued regarding the motion - Deviation #4 - ) to allow guest units to average ~~1000~~ 800 with a maximum of 1,200 square feet.

**VOTE:** Motion approved; 6-0 (Mr. Steele was excused).

Chair Zuba closed the Public Hearing.

### **C. Ordinance 14-XX – Outdoor Display**

Planning Coordinator Overmyer reported the proposed ordinance was the result of the working group of Town staff and merchants located in the downtown area.

Public Comment opened.

Tracey Gore, resident, explained she was not concerned with ‘what was put out for display’ rather her concern dealt with new language pertaining to the ‘enclosed dining’ area. She noted that the LPA agenda listed the item as ‘outdoor display’ and the public would not have known from the item that it also dealt with a language change for ‘enclosed dining’. She discussed her view that the new language contradicted the existing code as it pertained to enclosed dining and sale and service of alcohol.

Robin Thurston, resident, thanked the working group for keeping her business in mind and for keeping her in business as it pertained to the proposed amendments. She questioned, if approved, would she be required to install additional pavers which she was willing to do.

Planning Coordinator Overmyer expressed his belief that the additional pavers would be permitted.

Robin Thurston questioned if her license permit and her other vendors would remain the same.

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Planning Coordinator Overmyer responded in the affirmative.

Robin Thurston questioned who would be the person to speak with about fines (code enforcement).

Planning Coordinator Overmyer stated he would work with Ms. Thurston on the question regarding code enforcement fines.

Discussion was held concerning #4 regarding coming into compliance for the sale of a business.

Doug Speirn-Smith reported he was representing Harbor House and explained the ordinance had no provision for a building that was constructed to the right-of-way in the downtown core to allow for any type of display concurrent with that retail use. He suggested allowing, under certain provisions, that the right-of-way would have some supporting display for an existing retail use.

LPA Attorney Rooney addressed Ms. Gore's comments and explained the ordinance was advertised as outdoor display was because the Town's regulations regarding outdoor dining were under the outdoor display section of the code.

Jim Shenko, resident, noted he hoped Matanzas Inn had no intention of having a 'bunch of retail shops'. He discussed his concerns regarding the definition of enclosed dining (i.e. common engineered roof, etc.) and how the proposed ordinance could impact private property owners.

John Richard, member of the working group, addressed comments raised by previous speakers that included but was not limited to the grandfathering in existing businesses.

Public Comment closed.

Mr. Durrett questioned the rules followed by the rest of the Town and reported the former Community Development Director indicated there would be a plan for the rest of the island. He recommended rules that would apply island-wide.

Planning Coordinator Overmyer explained the outdoor display regulations were found with the LDC for the downtown zoning district.

Discussion was held concerning the outdoor display regulations for the downtown zoning district versus other areas/centers in the Town; and the uniqueness of the various centers in the Town.

Chair Zuba recognized Bud Nocera in the audience.

Bud Nocera, Fort Myers Beach Chamber of Commerce, offered a historical perspective on the matter and why it addressed one particular area in the Town.

Discussion ensued regarding the historical background and events surrounding the proposed amendments.

Vice Chair Shamp discussed her concerns with Exhibit 'A', and the enclosed dining areas and adding Old San Carlos Boulevard. She believed there was a huge policy change within the proposed ordinance.

LPA Attorney Rooney concurred that outdoor dining would be allowed in the right-of-way but it would have to be leased from the Town.

Discussion was held concerning leasing the Town's right-of-way; pedestrian walkways; the proposed amendment and a resulting change to policy; and prior provisions in the code for outdoor dining.

Ms. Plummer expressed her apprehension with approving the proposed ordinance with the inclusion of an outdoor dining aspect. She suggested the proposed ordinance amendments should just be about outdoor display of merchandise and have an Exhibit 'B' that came back to the LPA about dining.

Discussion ensued regarding areas for an outside display at the Harbor House and neighboring businesses; and the definition of the enclosed dining area.

LPA Attorney Rooney noted outdoor dining was currently allowed by the code with administrative approval. He explained if the LPA wanted to pull out the outdoor dining more comprehensively staff could do so.

Vice Chair Shamp questioned who was currently impacted by the proposed ordinance.

LPA Attorney Rooney reported there were accruing fines and litigation pending related to the proposed ordinance. He pointed out the LPA could move forward on the outdoor displays and not the outdoor dining. He exclaimed the recommendation to Council could be to pull out all new language referencing outdoor dining.

Chair Zuba recognized Mr. Richard and Bill Shenko in the audience.

John Richard addressed outdoor display and the public right-of-way as it related to future owners.

Bill Shenko expressed his view on the great difference between outdoor merchandise displays and outdoor dining. He suggested the outdoor merchandise display language should address the matter island-wide.

Chair Zuba recapped the action could be to move the matter forward, and recommend the elimination of references to dining in order to consider them in more detail.

**MOTION:** Mr. Bodenhafer moved to move the outdoor merchandise display matter forward, and recommend the elimination of references to dining in order to consider them in more detail; second by Vice Chair Shamp.

Vice Chair Shamp requested staff included her recommendations regarding outdoor dining she noted earlier (i.e. the addition of Old San Carlos Boulevard as it related to dining, etc.).

**VOTE:** Motion approved; 5-0 (Mr. Steele was excused; Mr. Kakatsch was absent from the Chambers at the time of the vote.)

### **Adjourn as LPA and reconvened as Historic Preservation Board**

Vice Chair Shamp reported at the May 5<sup>th</sup> Council Meeting she requested the Chapter 22 amendments go back to the Ad Hoc Committee to correct an error.

**MOTION:** Ms. Plummer moved to send the Chapter 22 amendments back to the Ad Hoc Committee; second by Mr. Zuba.

**VOTE:** Motion approved; 5-0 (Mr. Steele was excused; Mr. Kakatsch was absent from the Chambers at the time of the vote.)

### **Adjourn as Historic Preservation Board and reconvene as the LPA**

## **V. LPA MEMBER ITEMS AND REPORTS**

Chair Zuba – announced there would not be an LPA meeting in July.

Planning Coordinator Overmyer indicated there would be a full agenda in August for the LPA.

Vice Chair Shamp – noted in the past the agenda had an item that covered keeping track of agenda items and requested that be reinstated. She also requested that the LPA reinstate the habit of assigning a member to speak on cases that go before Council.

Mr. Durrett – not items or report.

Mr. Bodenhafer – no items or report.

Ms. Plummer – no items or report.

Mr. Kakatsch – no items or report.

Mr. Steele – was excused.

## **VI. LPA ATTORNEY ITEMS**

LPA Attorney Rooney – no items or reports.

## **VII. COMMUNITY DEVELOPMENT ITEMS**

Planning Coordinator Overmyer - no items or report.

## **VIII. ITEMS FOR NEXT MONTH'S AGENDA**

No discussion.

**IX. PUBLIC COMMENT**

Public Comment opened.

Robin Thurston questioned the next step for the LPA recommendation.

Planning Coordinator Overmyer reviewed the next step(s) for the LPA recommendation to Town Council.

Public Comment closed.

**X. ADJOURNMENT**

**MOTION:** Motion by Vice Chair Shamp, seconded by Ms. Plummer to adjourn.

**VOTE:** Motion approved; 6-0 (Mr. Steele was excused).

Meeting adjourned at 2:02 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Signature

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