Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE:	Special Exception (SEZ) for Pierside Grill to extend consumption on premise (COP) into Times Square
CASE NUMBER:	SEZ2015-0007
STAFF REPORT DATE:	January 25, 2016
LPA HEARING DATE:	February 9, 2016
LPA HEARING TIME:	9:00 AM
STAFF RECOMMENDATION:	**APPROVE**

I. APPLICATION SUMMARY

Applicant/Agent: Pierside Grill/Martin York

Request: A special exception in the DOWNTOWN zoning district to expand the outdoor consumption on premises (4COP - SRX) approval for the Pierside Grill Restaurant to include an additional 320 square foot area in Times Square consistent with the recently adopted Administrative Code.

Subject property: See Attachment A

Physical Address: 1000 Estero Boulevard, Unit 3

STRAP #: 24-46-23-W3-00021.0000

FLU: Pedestrian Commercial & Recreation

Zoning: Downtown & EC

Current use(s): Restaurant with 4COP-SRX alcohol license

Adjacent zoning and land uses (see Attachment E):

North: Downtown (Plaka Restaurant & Pete's Time Out) Pedestrian Commercial FLUM.

South: EC (Gulf of Mexico), Tidal FLUM.

East: Downtown & EC (Times Square Bazar) and Pedestrian Commercial FLUM.

West: The Pier and Times Square and then CF & EC (Lynn Hall Memorial Park).

II. BACKGROUND AND ANALYSIS

Background:

The Pierside Grill, 1000 Estero Boulevard, is a restaurant that has a 4 COP SRX liquor license. It is located in Times Square adjacent to the pier.

The Pierside Grill has applied for a special exception to extend the Consumption on Premise (COP) to a relatively small area in Times Square (see Attachment B). On September 9, 2015, Council adopted Administrative Code AC 1-2, Times Square Business Utilization (see Attachment C), which provides a process for businesses in Times Square to utilize the public rights of ways in the Times Square Pedestrian Plaza for extended business use such as outdoor dining. The code accommodates 10 lease areas with the intent that these areas will be utilized by the adjacent business. The applicant, on December 8, 2015 applied (see Attachment D) to utilize 320 square feet of Times Square within lease area 10 (Dairy Queen/The Beach Pierside Grill).

Land Development Code (LDC) Section 34-1264(a)(2)(a)(2) requires a special exception for any establishment that wants to provide outdoor seating where patrons can consume alcoholic beverages.

The restaurant is a popular dining establishment adjacent to the pier in Times Square. The Town recently created an Administrative Code to regulate the Town's Sidewalk Café or Business Extension program in Times Square. The applicant desires to expand their serving capacity into Times Square.

History

Prior to the current business operating on the site, the site was operated as the Pier One Restaurant (Pier One Inc.) with a 4 COP. Staff has attached information that documents the alcohol license back to 1987 and the transfer to the Beach Pierside Grill (see Attachment F).

The Beach Pierside Grill registered with the State of Florida on October 21, 1996. The new business applied for a sign permit, SGN220069133, on September 12, 1996. The permit was issued on September 27, 1996 and finaled on November 6, 1996. A use permit, USE000378477, for the business was applied for and approved on October 24, 1996.

In 1999, Town Council approved Resolution 99-39 (see Attachment G) to allow a trellis over the existing deck that extends about 74 feet seaward of the 1978 Coastal Construction Control Line (CCCL). The motion to approve the trellis was approved by a unanimous vote.

In a report concerning COP in EC zoned areas, dated October 6, 2011 (See Attachment H), the Community Development Director and the Town Attorney provided the following discussion:

> ***Legal Status:*** *While this approval was not specific to COP, it is informative, in that based upon the Council discussion, they clearly were aware that they were memorializing the outdoor dining (and hence COP) seaward of the 1978 CCCL Line. Further, the discussion by Council indicates that they acknowledged that the use was being approved in the Recreation Future Land Use.*

Beach Pierside Grill applied for administrative approval on February 19, 2013 (COP2013-0003) to expand the outdoor consumption on premises to an onsite beach area. This request was approved with conditions on March 19, 2013 (see Attachment I).

Applicant Instant Request:
The applicant is seeking the ability to have tables and serve alcohol in a 320 square foot area in Times Square (see Attachment B1).

Restaurant Setting/Context:
The Beach Pierside Grill is adjacent to the public pier in Times Square. The restaurant is adjacent to Dairy Queen and the Pier Peddlar. The desired outdoor seating area is in Times Square on the Gulf side of the square opposite of Pete's Time Out restaurant. As previously mentioned, the recently adopted Administrative Code 1-2 Times Square Business Utilization of Town's Rights of Way anticipates and accommodates the area that is proposed by this request. The request is located in an area of similar uses in Times Square.

Special Exception Use
The LDC Chapter 34 defines the term special exception use as follows:

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

As noted above, the restaurant use and proposed expansion of outdoor COP is located in close proximity to similar uses. The special exception process provides the opportunity to condition the requested use if the conditions are reasonably related to the impacts of the use that is the subject of the request.

Analysis:
The subject property, which includes the Beach Pierside Restaurant, is located in the Downtown zoning district and within Times Square adjacent to the public pier. The subject site is within walking distance to Lynn Hall Memorial Park and Crescent Beach Family Park as well as numerous hotels, motels, and rental properties. This area of the Town is known

for a variety of establishments offering a range of food and beverage options, several providing these services in the Times Square Pedestrian Plaza. This instant request for outdoor consumption on premises in this area is not a unique or unusual request. In fact, the recently adopted Administrative Code accommodates the use of the requested area.

The Town's Land Development Code (LDC) contains Subdivision II that provides regulations specific to the DOWNTOWN zoning district. LDC section 34-678 allows restaurants to provide outdoor seating areas in a manner that enhances the public realm and improves the town's sense of place and property values. The property is located in one of the most intensive commercial areas of the Town, Times Square. The subject site is located away from the residential areas of the Town.

In the following section of this report, the request consistency with the Town's Comprehensive Plan is discussed.

Request Comprehensive Plan Consistency:
The subject site is classified by the Town's comprehensive plan as "Pedestrian Commercial." The category descriptor policy is reproduced below:

> ***Policy 4-B-6 "PEDESTRIAN COMMERCIAL":*** *a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.*

The subject site is thus located in a primarily commercial district namely the Times Square activity center. The site is located along the Pedestrian Plaza as identified on Figure 34-7 of the LDC. The requested outdoor seating will contribute to the pedestrian-oriented public realm of Times Square.

The plan contains a Policy, Policy 4-A-3, which seeks to protect residential neighborhoods from the impacts of "intrusive" commercial activities. This policy is reproduced below:

> *POLICY 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3).*

The subject site is not located adjacent to a residential neighborhood. Policy 4-A-3 also refers to two additional Policies, Policies 4-C-2 and 4-C-3 which are discussed below.

Policy 4-C-2 addresses "Commercial Intensity". This policy states that "the maximum intensity of allowable commercial development in any category may be controlled by height restrictions or by other provisions of this plan and the Land Development Code". The policy also provides that standards in the LDC will encourage more intense commercial uses only in the "Pedestrian Commercial" category. As stated previously, the subject site is located in the Pedestrian Commercial category. The subject site is thus located in an area that accommodates more intense commercial uses.

Policy 4-C-3 provides direction concerning commercial locations for new or expanded commercial uses. This policy notes that where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. The policy also specifies that the Planned Development process can also be utilized. This policy also provides that the neighborhood context of proposed commercial uses is of paramount importance. The policy further states that "the sensitivity of a proposed commercial activity to nearby residential areas can by affected by" the type of commercial activities (such as traffic to be generated, hours of operation, and noise); physical scale (such as the height, and bulk of proposed buildings); and, the orientation of buildings and parking. The policy provides that "commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved".

Town Council is the final arbitrator of what constitutes commercial intrusion into a residential neighborhood. In staff's opinion the requested activity does not have the potential to disturb the "comfort" of residents as the nearest residences are located a substantial distance away.

The comprehensive plan recognizes in Objective 10-C that downtown is a recreational hub for island residents and visitors. Policy 10-C-2 delineates 3 public pedestrian plazas for the town, "Times Square", "Marina Plaza", and "Central Green". The subject site is, of course, located in Times Square.

<u>Special Exception Considerations:</u>
The Land Development Code includes a list of items that the Town Council must consider, if applicable, when reviewing approval of a requested special exception. These "Considerations" are contained in LDC Section 34-88 and are reproduced and discussed below.

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

The subject site has been used as a restaurant for several a decades. The Town Council has recently adopted an Administrative Code that accommodates and regulates the desired seating area. This constitutes changed conditions that make approval of the request appropriate.

b. The testimony of any applicant.

The Council will be able to hear from the applicant at the public hearing.

c. The recommendation of staff and of the local planning agency.

The staff recommendation is contained in this staff report. The LPA recommendation will be obtained at the LPA public hearing.

d. The testimony of the public.

The public will have the opportunity to testify at the LPA public hearing as well as at the Town Council public hearing.

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

The request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan. The request does not raise any compatibility concerns with any residential uses.

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

The proposed use is located in a fairly intense land use category, "Pedestrian Commercial", and is located in a public plaza. The requested use is compatible with adjacent uses. The proposed outdoor seating and COP meets all performance and locational standards.

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

The subject site is fully developed, contains no environmentally critical areas or natural resources to protect, conserve, or preserve. No additional lighting is proposed by this application. The property has been used as a restaurant for several decades.

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 request is compatible with existing and planned surrounding uses.

i. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

The requested outdoor seating will be in compliance with applicable general zoning provisions. The use will be operated consistent with the requirements of the adopted Administrative Code.

Special Exception Findings and Conclusions:
The Land Development Code, in Section 34-88, provides a series of *Findings* that Town Council has to make before granting any special exception. The Town Council must find that the applicant has demonstrated that the requested special exception:

a. Complies with the Fort Myers Beach Comprehensive Plan.
b. Complies with the Land Development Code.
c. Complies with other applicable town ordinances or codes.

Staff recommends that the Town Council find that the applicant has demonstrated that the requested special exception complies with the Town's Comprehensive Plan and the Land Development Code. The requested use complies with the adopted Administrative Code.

III. RECOMMENDATION

Staff recommends **APPROVAL** of the requested special exception to expand the outdoor consumption on premises (4COP - SRX) approval for the Beach Pierside Grill Restaurant to include an additional 320 square foot area in Times Square consistent with the recently adopted Administrative Code.

Staff recommends that approval of the special exception be subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *Approval of this special exception does not exempt the subject property from any provisions of the LDC. The conditions contained in COP2013-0003 Administrative Approval remain in effect except as modified herein.*

2. *The area of expansion into Times Square is limited to 320 square feet and is limited to locations depicted on Exhibit B. No outdoor entertainment is approved.*

3. *Hours of operation for the Times Square outdoor seating area is from 11:00 AM to 11:00 PM.*

4. *A permit, consistent with the requirements of Administrative Code 1-2, must be applied for, and be approved, prior to the use being established in Times Square.*

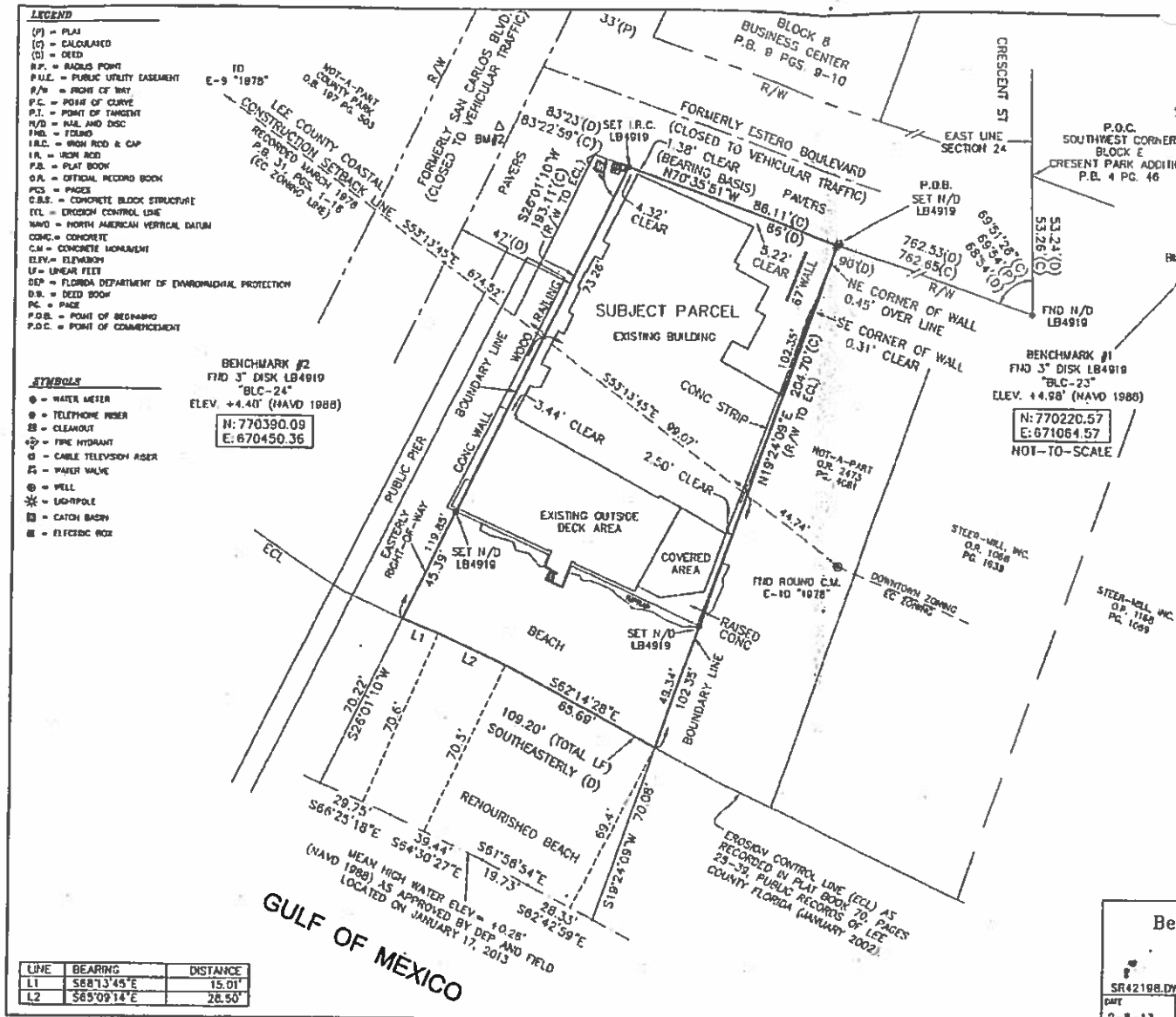
IV. CONCLUSION

Approval of the requested rezoning is consistent with the Comprehensive Plan and the recently adopted Administrative Code that regulates business use of the Times Square Pedestrian Plaza. Staff recommends APPROVAL of the requested special exception.

Attachments:
A - Survey Plat/legal
B - Application materials

B1 – Proposed outdoor seating area
C – AC 1-2
D – Sidewalk Café Permit Request
E – Aerial of surrounding zoning and land uses
F – Historical License Info
G – Resolution #99-39
H – COP in EC Report to LPA, October 6, 2011
I – Administrative Approval COP2013-0003, March 19, 2013

Attachment A



LINE	BEARING	DISTANCE
L1	S88°13'45"E	15.01'
L2	S65°09'14"E	28.50'

SURVEY PLAT

OF

A PARCEL OF LAND

LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

N

NOTES:

SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM DATED 2010.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

CO-ORDINATES AND BEARINGS ARE STATE PLANE GRID-FLORIDA WEST ZONE NAD 1983/1990 ADJUSTMENT HOLDING NGS CONTROL POINT "B008-2".

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

STRAP NO: 24-46-23-W3-00021.0000

ADDRESS: 1000 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 2-8-13.

DESCRIPTION AS RECORDED IN OFFICIAL RECORD BOOK 1547 AT PAGE 1877:

FROM THE SOUTHWEST CORNER OF BLOCK "E", CRESENT PARK ADDITION, PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON THE EAST LINE OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, RUN SOUTH ALONG SAID SECTION LINE FOR 53.24 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD, 80 FOOT RIGHT-OF-WAY; THENCE RUN NORTHWESTERLY AT AN INCLUSIVE ANGLE OF 68°54' WITH SAID SECTION LINE FOR 762.53 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 86 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE COUNTY ROAD RUNNING FROM MATANZAS PASS BRIDGE (SAN CARLOS BOULEVARD) TO THE GULF OF MEXICO; THENCE DEFLECT LEFT 83°23' AND RUN SOUTHWESTERLY PARALLEL TO AND 47 FEET MEASURED ON A PERPENDICULAR, FROM THE CENTERLINE OF THE LAST MENTIONED ROAD, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY, ALONG SAID WATERS, TO A POINT ON A LINE PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT OF BEGINNING; THENCE RUN NORTHEASTERLY, ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

ORIGINAL

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

BEAN, WHITAKER, LUTZ & KARCH, INC.

SCOTT C. WARNER, P.S.M., NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS CERTIFICATE IS ONLY FOR THE LINES DESCRIBED HEREIN
- IT IS NOT A CERTIFICATION OF TITLE, EASEMENTS, RESTRICTIONS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL RIGHTS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW

SURVEY-PIERSIDE

Bean, Whitaker, Lutz & Karch, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-6919 (239) 481-1311

SR42198.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
2-8-13	42198	S.PIERCE	1"= 40'	1 OF 1	24-46-23

Attachment B

Town of Fort Myers Beach
DEC 0 9 2015
Received Community Devel.

SE2015-000

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: _____ DATE: 12/9/15

Site Address: 1000 ESTERO BLVD UNIT 3

STRAP Number: 24-46-23-W3-00021.0000

Applicant: PIERSIDE GRILL Phone: 239-765-7800

Contact Name: MARTIN YORK Phone: 239-810-0120

Email: MARTINYORK@YAHOO.COM Fax: 239-463-7263

Current Zoning District: _____

Future Land Use Map (FLUM) Category: _____

FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

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

PART I – General Information

A. Applicant*: MARTIN YORK Phone: 239.810.0120

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: 1000 ESTERO BLVD FT. MYERS BEACH FL 33931

Email: MARTINYORK@YAHOO.COM Fax: 239-463-7263

Contact Name: MARTIN YORK Phone: 239-810-0120

B. Relationship of Applicant to subject property:

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

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

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

Name: MARTIN YORK Phone: 239.810.0120

Address: 1000 ESTERO BLVD #3, FT MYERS BEACH FL 33931

Email: MARTIN YORK@YAHOO.COM Fax: 239.463.7263

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)

- [x] Special Exception
- [ ] Variance from LDC Section _____ - _____
- [ ] Conventional Rezoning from _____ to _____
- [ ] Planned Development
  - [ ] Rezoning from _____ to [ ] Commercial PD [ ] Residential PD
  - [ ] Amendment. List the project number: _____
  - [ ] Extension/reinstatement of Master Concept Plan. List project number: _____
- [ ] Appeal of Administrative Action
- [ ] Vacation [ ] Right-of-Way [ ] Easement
- [x] Other. Please Explain: EXTENSION OF EXISTING COP PREMISES.

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

- [x] Single Owner (individual or husband and wife)

Name: WILLIAM D WHITAKER Phone: 239-466-7228

Mailing Address: 15820 SAN ANTONIO CT, FORT MYERS FL 33908

Email WHITSINN61@AOL.COM Fax: NA

☐ 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.W3.00021.0000

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
William D. Whitaker	100%
15820 San Antonio Ct	
Ft. Myers, FL 33908	

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

Name, Address and Office	Percentage of Stock

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

Name and Address	Percentage of Interest

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

Name and Address	Percentage of Ownership
DOUGLAS SPENCER-SMITH	49
PICKHOUSE FT. MYERS BEACH INC	1
CHRIS ARNBERG	16.66
DAVE CHETWIN	16.66
MARTIN YURICK	16.67

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

Name, Address and Office	Percentage of Stock

Date of Contract: _____

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

Name	Address

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

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

Signature

MARTIN YORIC
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 7 day of Dec., 20 15, by MARTIN YORIC.

Linda S Glover
Notary Public Signature

(SEAL)

Linda S. Glover
Notary Printed Name

Personally Known ✓ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: 12/22/16

LINDA S. GLOVER
MY COMMISSION # EE 854693
EXPIRES: December 22, 2016
Bonded Thru Notary Public Underwriters

PART V – Property Information

A. Legal Description:

STRAP: 24-46-23-W3-00021.0000

Property Address: 1000 ESTERO BLVD FORT 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: 1547 Page: 1077 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) _____ feet

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

Frontage on street: 49.1 feet. Frontage on waterbody: _____ feet

Total land area: 7719 ☐ acres ☐ square feet

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

DIRECTLY NEXT TO THE PUBLIC PIER.

☐ 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): ON FILE WITH TOWN

- [ ] 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):

- [ ] Low Density
- [ ] Mixed Residential
- [ ] Boulevard
- [ ] Pedestrian Commercial
- [ ] Marina
- [ ] Recreation
- [ ] Wetlands
- [ ] Platted Overlay

H. Zoning (see official Zoning Map):

- [ ] RS (Residential Single-family)
- [ ] RC (Residential Conservation)
- [ ] RM (Residential Multifamily)
- [ ] RPD (Residential Planned Development)
- [ ] CM (Commercial Marina)
- [ ] CO (Commercial Office)
- [ ] CB (Commercial Boulevard)
- [ ] CR (Commercial Resort)
- [ ] CPD (Commercial Planned Development)
- [ ] CF (Community Facilities)
- [ ] IN (Institutional)
- [ ] BB (Bay Beach)
- [ ] EC (Environmentally Critical)
- [x] DOWNTOWN
- [ ] SANTOS
- [ ] VILLAGE
- [ ] SANTINI

PART VI

AFFIDAVIT
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature of owner or authorized agent

12.3.15
Date

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 3RD day of December 2015, by MARTIN S. YORK.

LINDA S. GLOVER
MY COMMISSION # EE 854693
EXPIRES: December 22, 2016
Bonded Thru Notary Public Underwriters
(SEAL)

Linda S. Glover
Notary Public Signature

Linda S. Glover
Notary Printed Name

Personally Known ✓ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: 12/22/16

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, MARTIN YORK (name), as MANAGING PARTNER (title) of PIERHOUSE GRILL AND FAMOUS BLUEFISH BAR (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.

PIERHOUSE FORT MYERS BEACH LTD
Name of Entity (corporation, partnership, LLP, LLC, etc.)

Signature: [signature] Title: MANAGING PARTNER

Typed or Printed Name: MARTIN S. YORK Date: 12/3/15

STATE OF FLORIDA)
COUNTY OF LEE)

Subscribed and sworn to (or affirmed) before me this 3RD day of December 20 15, by MARTIN YORK, as (title) MANAGING PARTNER on behalf of (company name) PIERHOUSE FT. MYERS BEACH LTD.

LINDA S. GLOVER
MY COMMISSION # EE 854693
EXPIRES: December 22, 2016
Bonded Thru Notary Public Underwriters

Linda S. Glover
Notary Public Signature

Linda S. Glover
Notary Printed Name

Personally Known ✓ or Produced Identification _____

Type of Identification Produced: _____ My Commission Expires: 12/22/16

Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT

SUPPLEMENT AA-C
Consumption-on-Premises

This is the second part of a two part application. Please be sure to include the Administrative Action Application, which requires general information, with this supplemental form requiring specific information regarding a **Consumption-on-Premises** request. (Only use this form if LDC Section 34-1261 through 34-1264 clearly allows administrative approval of your request, otherwise use the Public Hearing form and Special Exception Supplement.) Please submit *two paper copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

PROJECT NUMBER: _____ DATE: _____

Request: ☐ Indoor On-Premise ☑ Outdoor On-Premise Expansion (Ord.12-03)

Name of Establishment: PIERSIDE GRILL AND FAMOUS BLOWFISH BAR

Site Address: 1000 ESTERO BLVD UNIT 3, FORT MYERS BEACH FL 33931

STRAP Number (use additional sheets if necessary): 24-46-23-W3-00021-0000

Current Zoning: _____ Future Land Use: _____

Waterfront: ☐ No ☐ Yes If yes, provide width along waterfront: _____ ft

Applicant: MARTIN YORK Phone: 239-810-0120

Email: MARTINYORK@YAHOO.COM Fax: 239-463-7263

Type of License: ☐ 2COP ☑ 4COP SRX ☐ 4COP ☐ Other: _____

Type of Establishment

- ☐ Bar/Cocktail Lounge
- ☐ Golf Course Clubhouse
- ☐ Membership Club
- ☑ Restaurant w/ Outdoor Seating (Ord. 12-03)
- ☐ Charter/Cruise Ship
- ☐ Hotel/Motel
- ☐ Restaurant

Requested Hours of Operation: 11 - 11

(Please note outdoor, on the sand COP is limited to one hour after sunset or 9pm whichever is earlier)

Required Items:

- [x] Notarized authorization from Property Owner(s) to apply for permit
- [ ] Surrounding Area Map depicting all uses within 500 ft of the subject property
- [ ] Floor Plan of interior layout
- [ ] Site Plan of entire subject property

Additional Required Items (*For properties effected by Ord. 12-03 only*)

- [ ] Recent Survey depicting:
  - [ ] Mean High Water Line (MHWL) and/or Erosion Control Line (ECL)
  - [ ] EC Zoning District Boundary and/or 1978 Coastal Construction Control Line
  - [ ] Building/Deck/Patio Footprint(s)
- [ ] Site Plan depicting:
  - [ ] Area of expansion
  - [ ] Setbacks and dimensions per Ord. 12-03
  - [ ] MHWL or ECL
  - [ ] 1978 CCCL

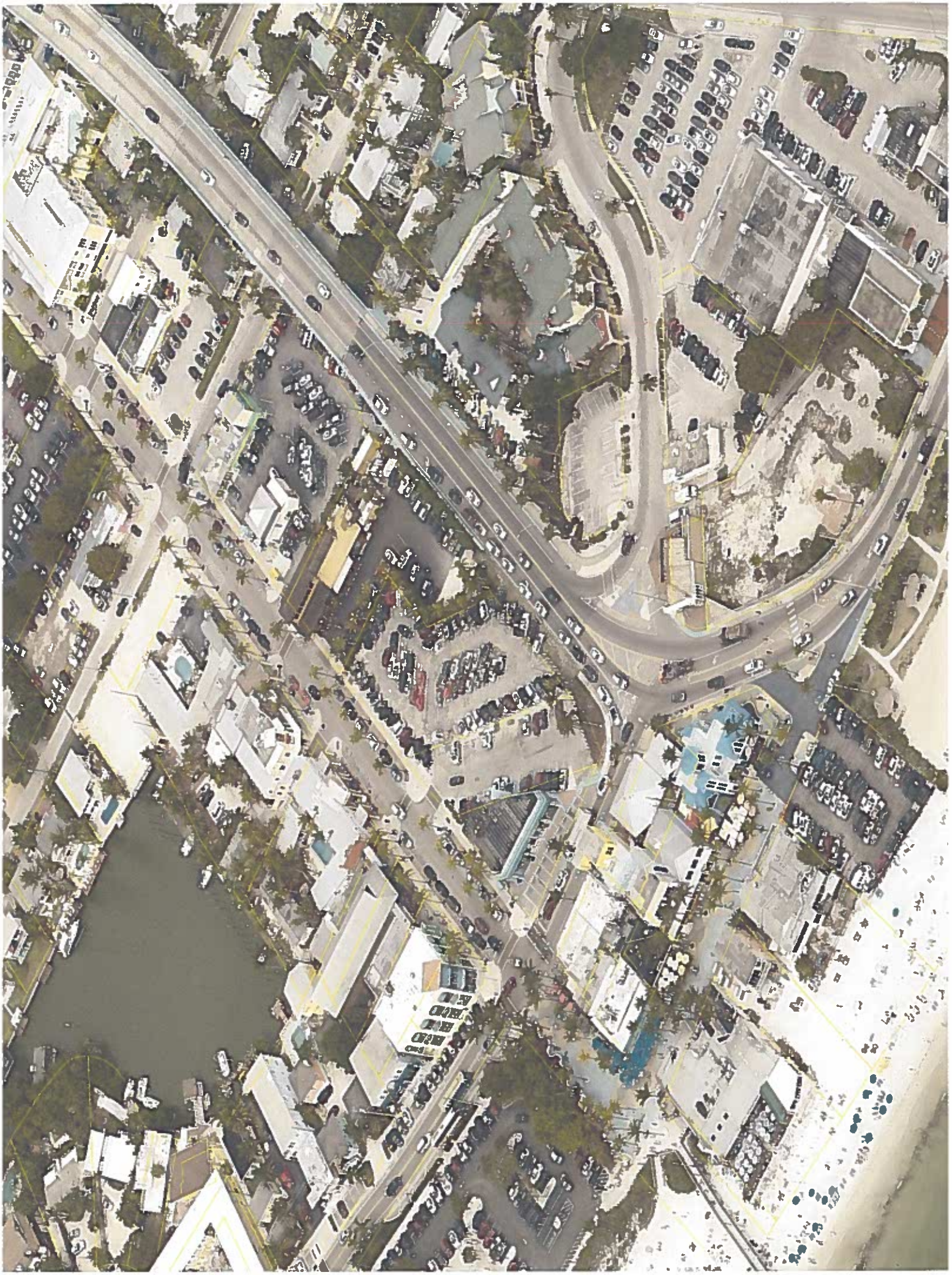
*** See LDC Section 34-1261 through 34-1264 for rules and regulations regarding alcoholic beverage consumption-on-premises permitting. Please ensure that the requested consumption-on-premises use does not require a Special Exception before using this form.

*** Please not this application does not include approvals for any outdoor entertainment (live or pre-recorded) or special events.

Pierside Grill and Famous Blowfish Bar

cafe seating

= Service access to pierside & DQ



N

ORIGINAL
11X17

SURVEY PLAT

OF
A PARCEL OF LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

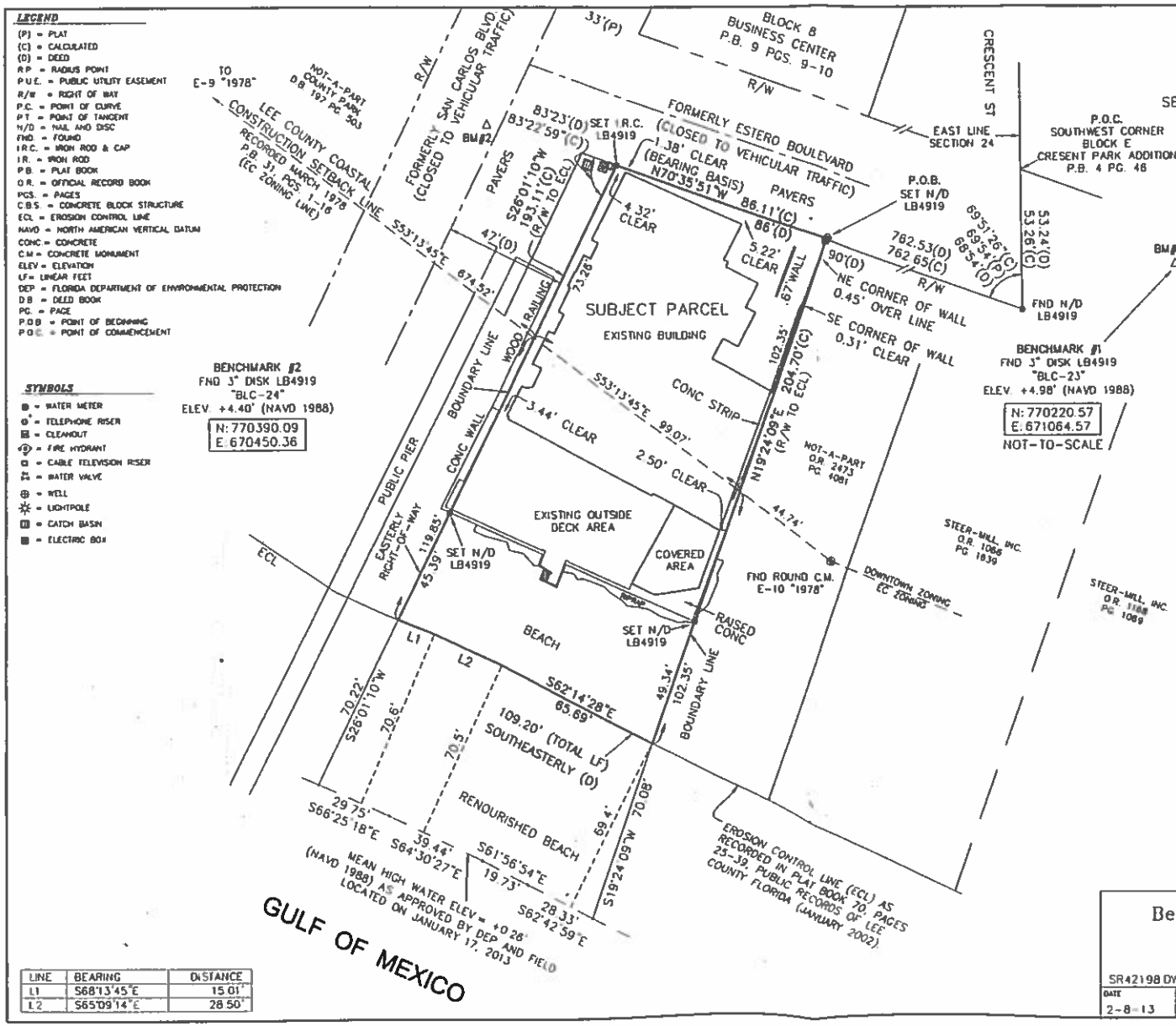
N

LEGEND

(P) = PLAT
(C) = CALCULATED
(D) = DEED
R P = RADIUS POINT
P.U.E. = PUBLIC UTILITY EASEMENT
R/W = RIGHT OF WAY
P.C. = POINT OF CURVE
P.T. = POINT OF TANGENT
N/D = NAIL AND DISC
FND. = FOUND
I.R.C. = IRON ROD & CAP
I.R. = IRON ROD
P.B. = PLAT BOOK
O.R. = OFFICIAL RECORD BOOK
PGS. = PAGES
C.B.S. = CONCRETE BLOCK STRUCTURE
ECL = EROSION CONTROL LINE
NAVD = NORTH AMERICAN VERTICAL DATUM
CONC = CONCRETE
C.M = CONCRETE MONUMENT
ELEV = ELEVATION
LF = LINEAR FEET
DEP = FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
D.B = DEED BOOK
PG. = PAGE
P.O.B = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT

SYMBOLS

= WATER METER
= TELEPHONE RISER
= CLEANOUT
= FIRE HYDRANT
= CABLE TELEVISION RISER
= WATER VALVE
= WELL
= LIGHTPOLE
= CATCH BASIN
= ELECTRIC BOX



NOTES:
SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM DATED 2010

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF

CO-ORDINATES AND BEARINGS ARE STATE PLANE GRID-FLORIDA WEST ZONE NAD 1983/1990 ADJUSTMENT HOLDING NGS CONTROL POINT "BOOB-2".

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

STRAP NO: 24-46-23-W3-00021.0000

ADDRESS: 1000 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 2-8-13.

DESCRIPTION AS RECORDED IN OFFICIAL RECORD BOOK 1547 AT PAGE 1077:

FROM THE SOUTHWEST CORNER OF BLOCK "E", CRESENT PARK ADDITION, PLAT BOOK 4, PAGE 48, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON THE EAST LINE OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, RUN SOUTH ALONG SAID SECTION LINE FOR 53.24 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD, 80 FOOT RIGHT-OF-WAY; THENCE RUN NORTHWESTERLY AT AN INCLUSIVE ANGLE OF 68°54' WITH SAID SECTION LINE FOR 782.53 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 86 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE COUNTY ROAD RUNNING FROM MATANZAS PASS BRIDGE (SAN CARLOS BOULEVARD) TO THE GULF OF MEXICO; THENCE DEFLECT LEFT 83°23' AND RUN SOUTHWESTERLY PARALLEL TO AND 47 FEET MEASURED ON A PERPENDICULAR, FROM THE CENTERLINE OF THE LAST MENTIONED ROAD, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY, ALONG SAID WATERS, TO A POINT ON A LINE PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT OF BEGINNING; THENCE RUN NORTHEASTERLY, ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

BEAN, WHITAKER, LUTZ & KAREH, INC.

SCOTT C. WHITAKER, P.S.M. NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA
- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW

SURVEY-PIERSIDE

LINE	BEARING	DISTANCE
L1	S68°13'45"E	15.01'
L2	S65°09'14"E	28.50'

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

SR42198.DWG

DATE	PROJECT NO	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
2-8-13	42198	S.PIERCE	1"= 40'	1 OF 1	24-46-23

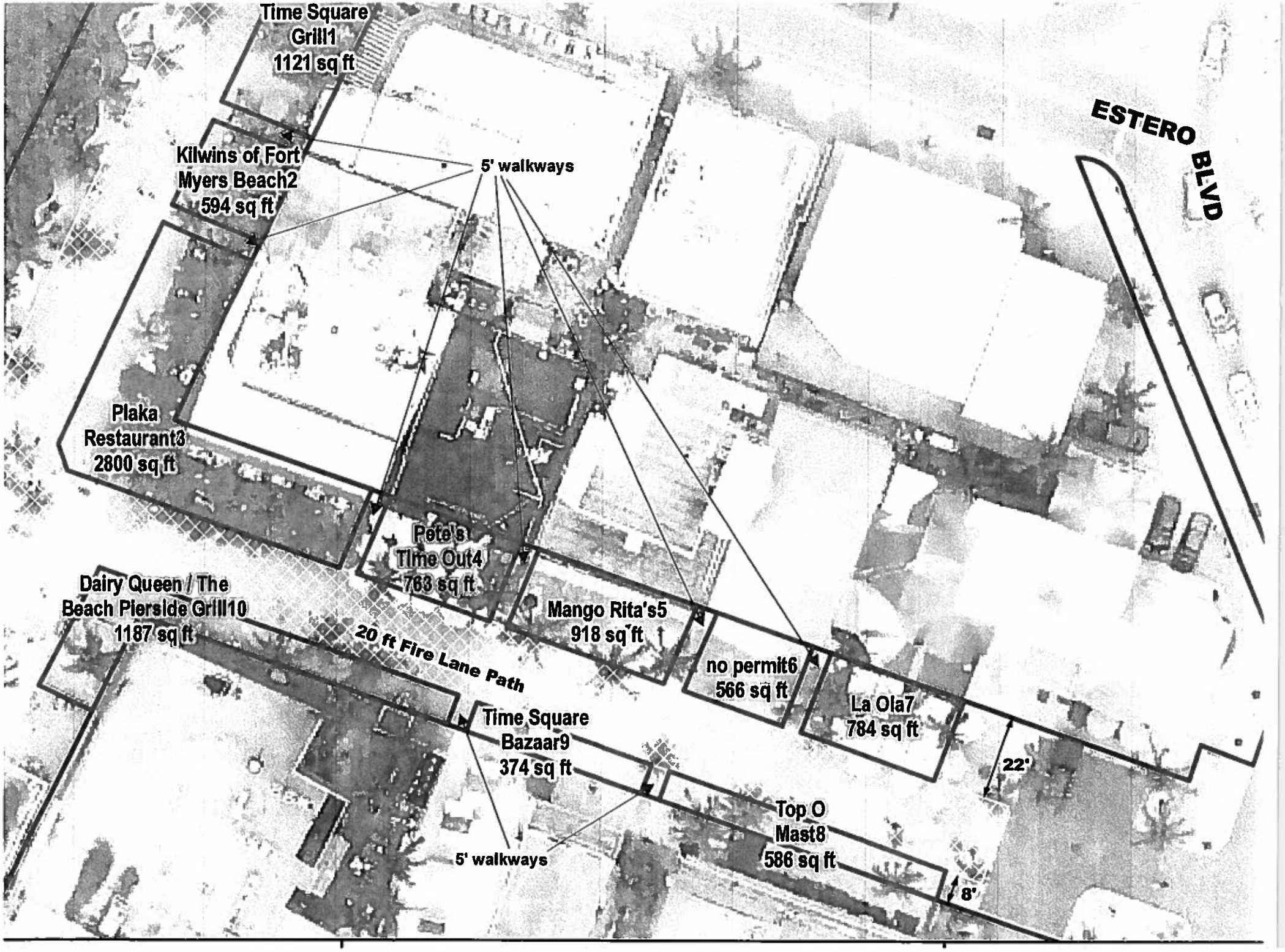
Surrounding Area Map

2/5/2013

Buffer Distance: 500 ft

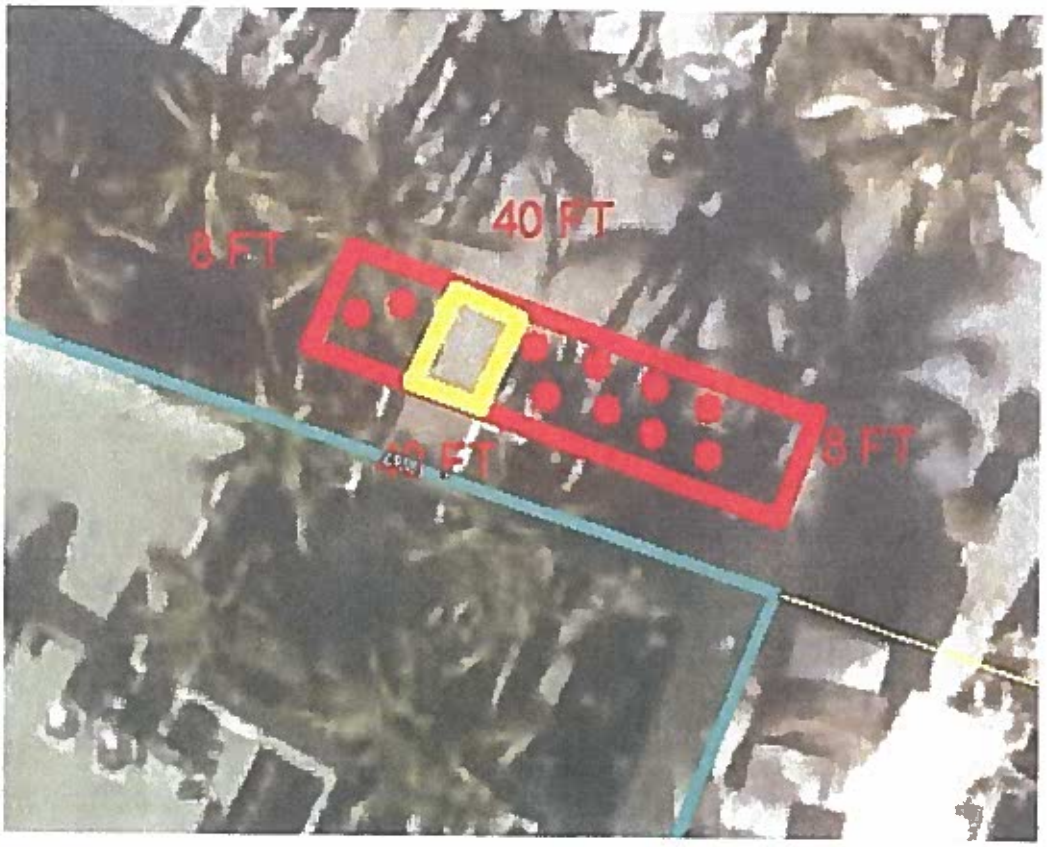
24-46-23-W3-00021.0000

220 165 110 55 0 220 Feet


Time Square
Grill1
1121 sq ft
Kilwins of Fort
Myers Beach2
594 sq ft
5' walkways
ESTERO BLVD
Plaka
Restaurant3
2800 sq ft
Pete's
Time Out4
763 sq ft
Dairy Queen / The
Beach Pierside Grill10
1187 sq ft
20 ft Fire Lane Path
Mango Rita's5
918 sq ft
no permit6
566 sq ft
La Ola7
784 sq ft
Time Square
Bazaar9
374 sq ft
22'
Top O
Mast8
586 sq ft
5' walkways
8'

Attachment B 1

Pierside Grill and Famous Blowfish Bar cafe seating



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SURVEY PLAT

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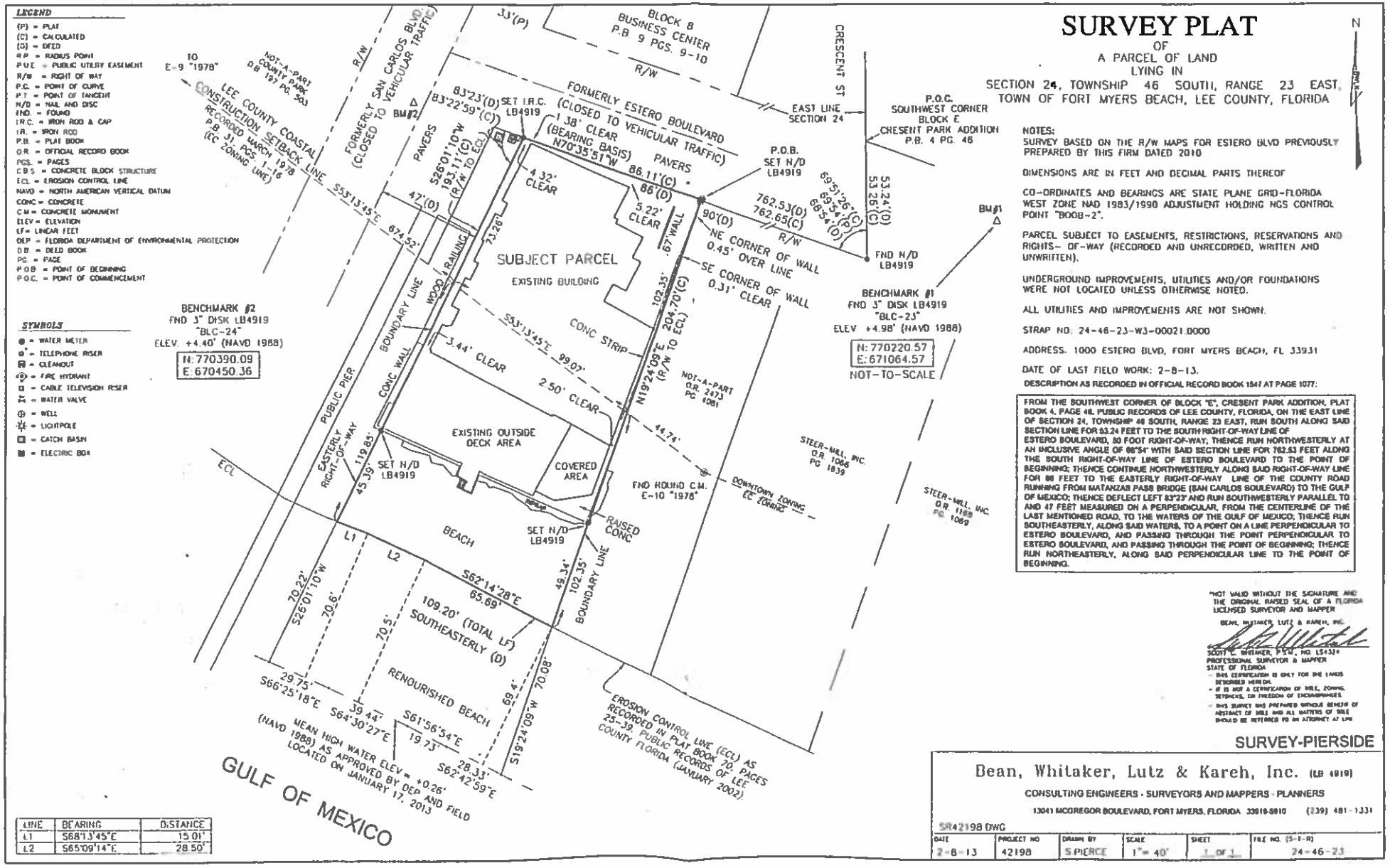

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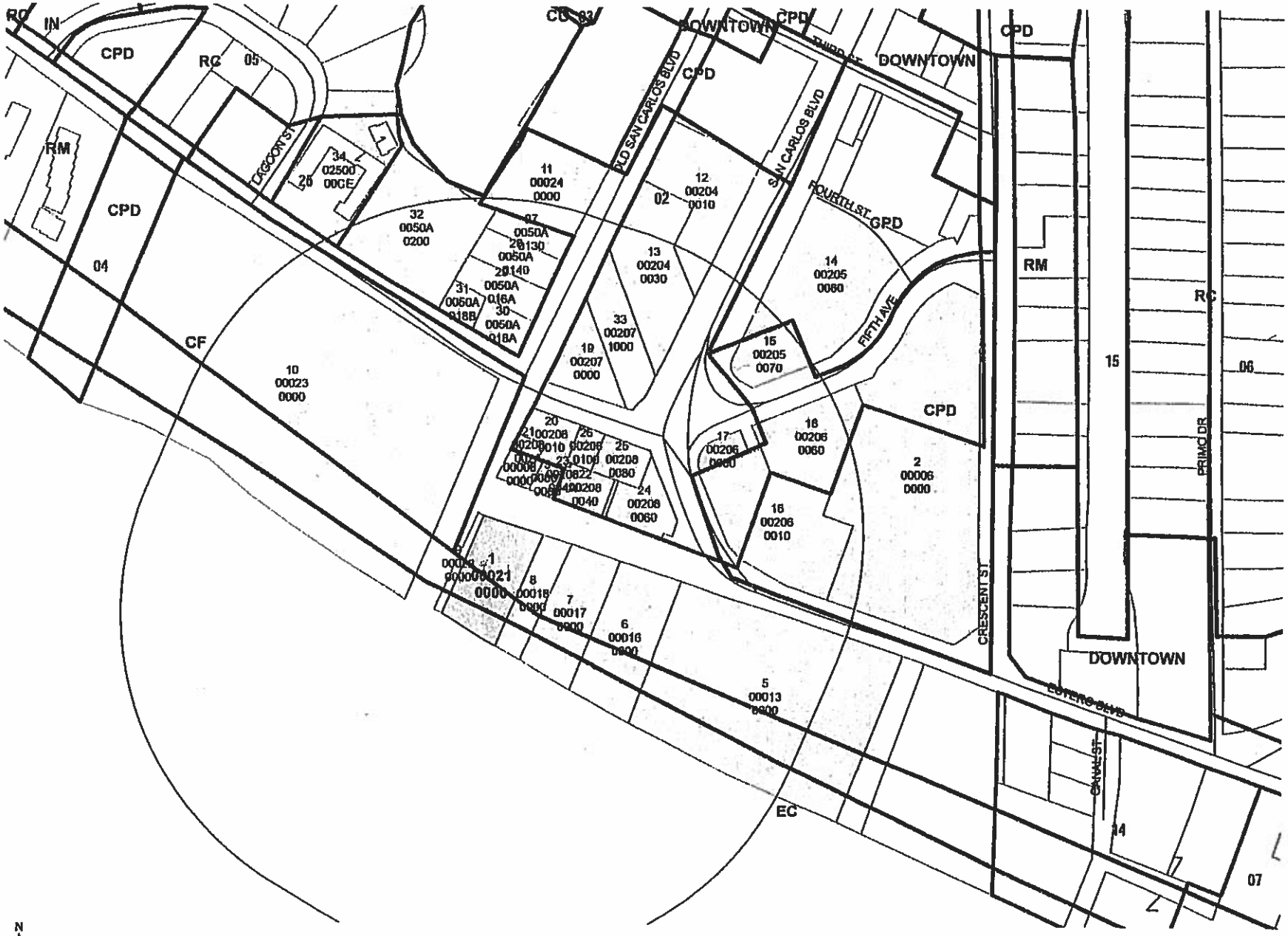
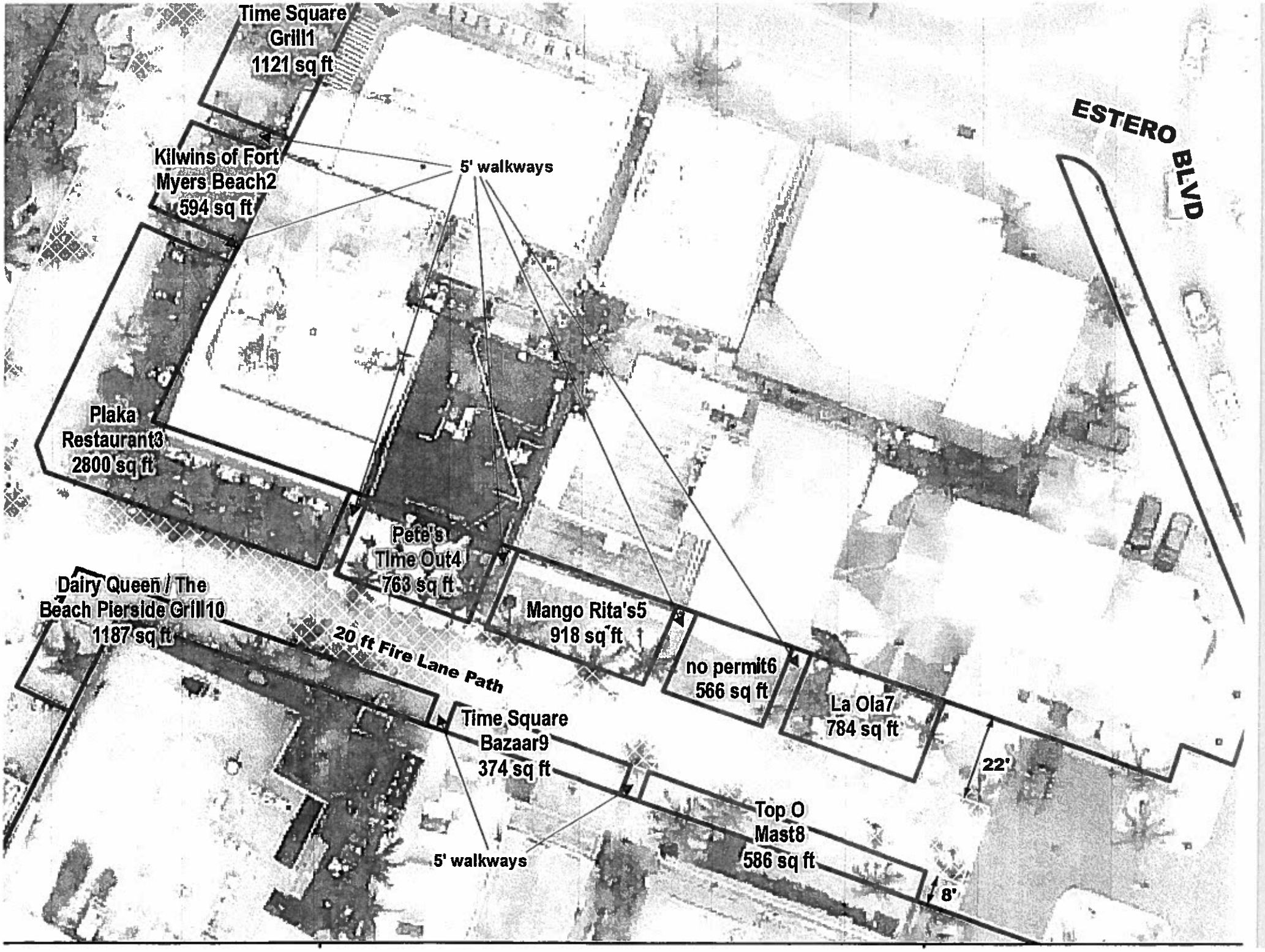
2/5/2013

Buffer Distance: 500 ft



24-46-23-W3-00021.0000

220 165 110 55 0 220 Feet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1121 sq ft
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594 sq ft
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no permit6
566 sq ft
La Ola7
784 sq ft
Time Square
Bazaar9
374 sq ft
22'
Top O
Mast8
586 sq ft
5' walkways
8'

Town of Fort Myers Beach
Administrative Code 1-2
Times Square Business Utilization of Town's Rights of Way

PURPOSE

This Administrative Code provides a process for businesses to utilize the Town of Fort Myers Beach rights of way (ROW) in the Times Square Pedestrian Plaza for the extended business of outdoor dining and display of merchandise. This is necessary to properly regulate the utilization of the Estero Boulevard and Old San Carlos Boulevard rights of way. This Code also standardizes the process of issuing permits to utilize the Plaza for business purposes, as well as the means by which these permits are enforced by the Town.

DEFINITIONS

Authorized Use: The occupation of the Town's rights of way by virtue of an approved permit.

Encroachment: An occupation or use of the Town's rights of way which has not been authorized by the approval of a permit.

Extended Business Use Area: The area an adjacent business occupies by permit within the Times Square Pedestrian Plaza.

Times Square Pedestrian Plaza: Refer to Land Development Code Figure 34-7.

Plaza Outdoor Dining: Restaurant seating located within the Times Square Pedestrian Plaza within the Town's rights of way adjacent to the restaurant establishment.

Plaza Outdoor Display of Merchandise: Products for sale adjacent to businesses located within the Times Square Pedestrian Plaza.

Rights of Way: A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway, road, street, bridge, alley, or public utility easement, for which the Town is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface.

GENERAL

The basic principle underlying this Code is that no person or entity may lawfully occupy or use the Town's rights of way without authorization to do so. This Code specifies the rules, regulations and process to utilize the rights of way within the Time Square Pedestrian Plaza.

IDENTIFYING EXTENDED BUSINESS USE AREA

Extension area must be directly adjacent to (in front of) business operation as identified on Exhibit 1. Business must be conducted only within the premise extension area by the adjacent existing business (no exception). This is an extension of business area- no subletting to other vendors will be permitted. Permittee may not place any objects outside of the extended use area within the pedestrian plaza. Extension area will be marked off and designated by a blue marked paver or other marker material as indicated by the Town. Exhibit 1 depicts the total leasable areas. A Permittee may choose to lease a portion or the entirety of the extended business use area.

PERMITTEE USE OF EXTENDED BUSINESS USE AREA

Permittee may place personal property, limited to a hostess stand, tables (with or without umbrellas) and chairs in designated area immediately adjacent to their place of business upon permit approval and payment of all fees. Umbrellas must maintain a 7 foot clearance or greater from the ground to the overhang; overhang must stay within permitted extended use area.

Tables, Chairs, Umbrellas and other furnishings associated with the outdoor seating area must be of sufficient quality design, materials, and workmanship to ensure the safety and convenience of area occupants and compatibility with adjacent uses. No tables, chairs or any other parts of an outdoor seating area will be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk in or near permitted area.

Food preparation must only occur within the enclosed principal building containing the eating or drinking establishment.

All outdoor entertainment must cease by 11:00 PM. The property must utilize best management practices that include the following:

a. The Permittee must utilize an internal sound system that will by managed and controlled by the property manger
b. All amplified performers will utilize the installed internal sound system

The property will adhere to the Town's Noise Ordinance.

EXTENDED BUSINESS USE AREA SIGNAGE

One menu board is permitted per each extended business use area. No secondary signs allowed. All signs must comply with the sign ordinance except for the umbrellas at Plaka Restaurant. Plaka Restaurant umbrellas must comply within 5 years of adopted date of this Code. This exception only applies to the current umbrellas which include the name of the establishment. Signage is not permitted on tables, chairs, umbrellas, or any other furnishings associated with outdoor seating areas that are visible from right-of-way.

MAKING THE DECISION TO PERMIT THE EXTENDED BUSINESS USE AREA
The Town will maintain an application for businesses to obtain the right to utilize the extended business use area. Each Permittee must fill out the application and receive approval through the Town to use the publicly owned area of Times Square. The application to utilize an extended business use area must be submitted by September 15th. The license will be approved and issued by October 1st.

The Permittee is only eligible to utilize the adjacent extended business use area as depicted on Exhibit 1. The permittee will provide a seating plan that provides the width and depth of the use area, including the number of tables, chairs, umbrellas and location of hostess stand if applicable. Chairs and umbrellas must be approved by the Town.

DURATION OF PERMITTED USE
Permit will extend from October 1 through September 30 of the following year.

PERMIT FEES
On October 1st, 2015 Town Council approved $6.00 per square footage rate. This rate was established for a 3 year period and to be reassessed after this period. Any rate increases will correspond with the Consumer Price Index (CPI) Southern All Urban Consumers. Every year, after the initial 3 year period, Town Council may adjust rate and update the fee schedule accordingly. All fees must be submitted to the Town by October 31st, 2015. If the Permittee chooses to pay monthly, an additional administrative fee will be charged and will be due on the last day of each month for the following month.

Should the Permittee fail to pay the annual or monthly fee, the agreement will be considered null and void and Permittee will be required to vacate the extension of premises. Agreements will not be effective until all fees are paid. The Permittee will be responsible for sales tax and must submit proof to Town Hall.

Should the extended business use area be unavailable for Town related projects, the Permittee will not be subject to fees for the duration of the project.

LICENSES, CONSUMPTION ON PREMISES AND INSURANCE
Any business that is required to have a State of Florida Alcoholic Beverages and Tobacco Extension of Premises Permit must provide a current copy to the Town. Permittee must apply for an on-premises consumption of alcoholic beverages permit if applicable. The permit for consumption-on-premises requires the following:

a. The site plan must include a detailed seating plan.
b. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, 4 COP, SRX, 11C, extension of premises, etc., and the anticipated hours of operation for the business, must be submitted.

Permittee must secure and maintain insurance for the extension area and provide a Certificate of Insurance naming the Town of Fort Myers Beach as a Certificate Holder and as an Additional

Insured Party. Insurance coverage must remain in effect for the duration of the permit agreement.

Permittee must provide a current copy of their Lee County Occupational License and State of Florida Department of Business and Professional Regulation Food Service Permit prior to signing the permit agreement.

Should a required license, permit or insurance come up for renewal during this contract, all new supporting documentation must be submitted to Town Hall within Ten (10) business days of receipt.

The Permittee must contain the extended business use within the approved extended business use area as depicted on Exhibit 1.

MAINTENANCE OF PREMISES

Each Permittee must maintain the cleanliness of the extended business use area. Debris such as paper products, cans/bottles, straws, cigarette butts, palm fronds must be picked up daily. The premise extension area will cleared of all property when notified by the Town that a paver cleaning is scheduled.

Tables, chairs and other objects must be immediately removed for emergencies and general maintenance. Permittee must stack neatly all chairs, tables and umbrellas every night.

PLAZA DAMAGE AND TOWN PROPERTY

The Permittee assumes and accepts responsibility of any damage other than normal wear and tear caused to Town property by reason of the use of the property. All trees, lamp posts and public benches are the property of the Town of Fort Myers Beach and must not be used by the business in any way, nor will they be altered in any way by the business.

TRASH COLLECTION SERVICES

All trash receptacles must be kept on Permittee property in a neat and sanitary manner. All cardboard is to be flattened and placed in a Town of Fort Myers Beach plastic bag. Town Staff has right of entry to collect waste as needed.

Permittee will pay trash removal fee as established by Town Council and set forth in the fee schedule.

FIRE LANE PATH, UTILITY EASMENTS AND OTHER PUBLIC USE AREAS

Permittee must not obstruct the movement of pedestrians along sidewalks or through areas intended for public use. All utility easements must be kept clear for easy accessibility.

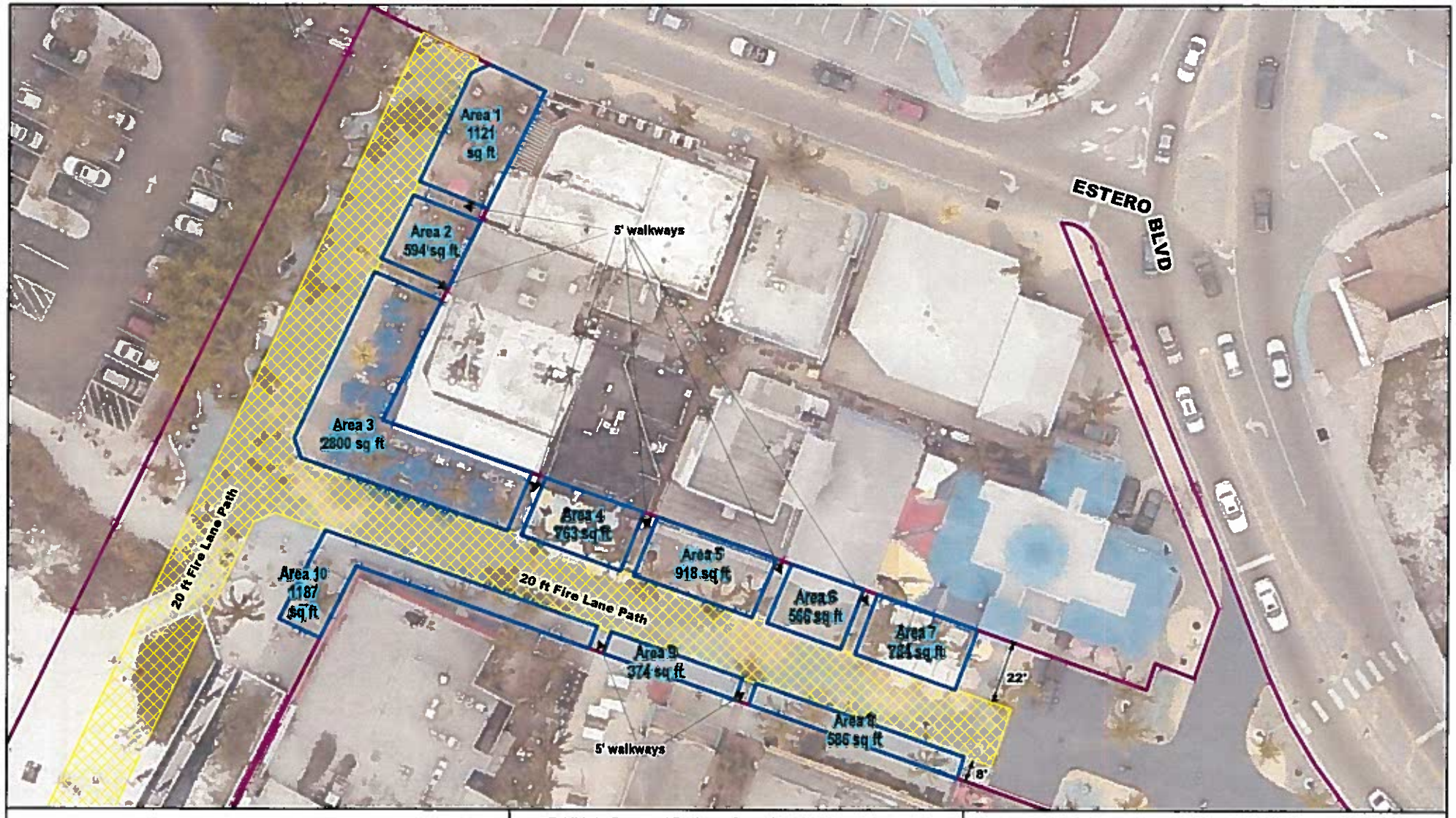
Permittee must keep all fencing, tables, chairs etc. out of the 20 foot Fire Lane Path and 5 foot utility easements as depicted on Exhibit 1. The Fire Lane Path must be kept clear of all extended business use to allow the passage of emergency vehicles. No soliciting of any kind is permitted outside of the business use area including food sampling, handing out menus etc.

ENFORCEMENT
Permittee must abide by all rules and regulations, violations will be issued in writing by a Town Official or its delegate. After three (3) written warnings to the business owner and property owner, the extension permit will be revoked.

Approval of sidewalk café application is subject to revocation at all times. May be revoked or suspended if found that:

- The permit holder does not have insurance which is correct and effective in the minimum amounts
- Any necessary business or health permit or license has been suspended, revoked or canceled;
- The permit holder exceeds the approved square footage by placing any additional tables, chairs, etc., beyond the approved area;
- The permit holder has failed to correct violations of this article or conditions of this permit within 72 hours of receipt of the notice of violations delivered in writing to the property; or.
- The site is not in compliance with the approved outdoor seating site plan.
- The Permittee does not pay monthly/yearly extension of use fee.

If a Permittee's license is revoked under this section, no refunds will be issued.



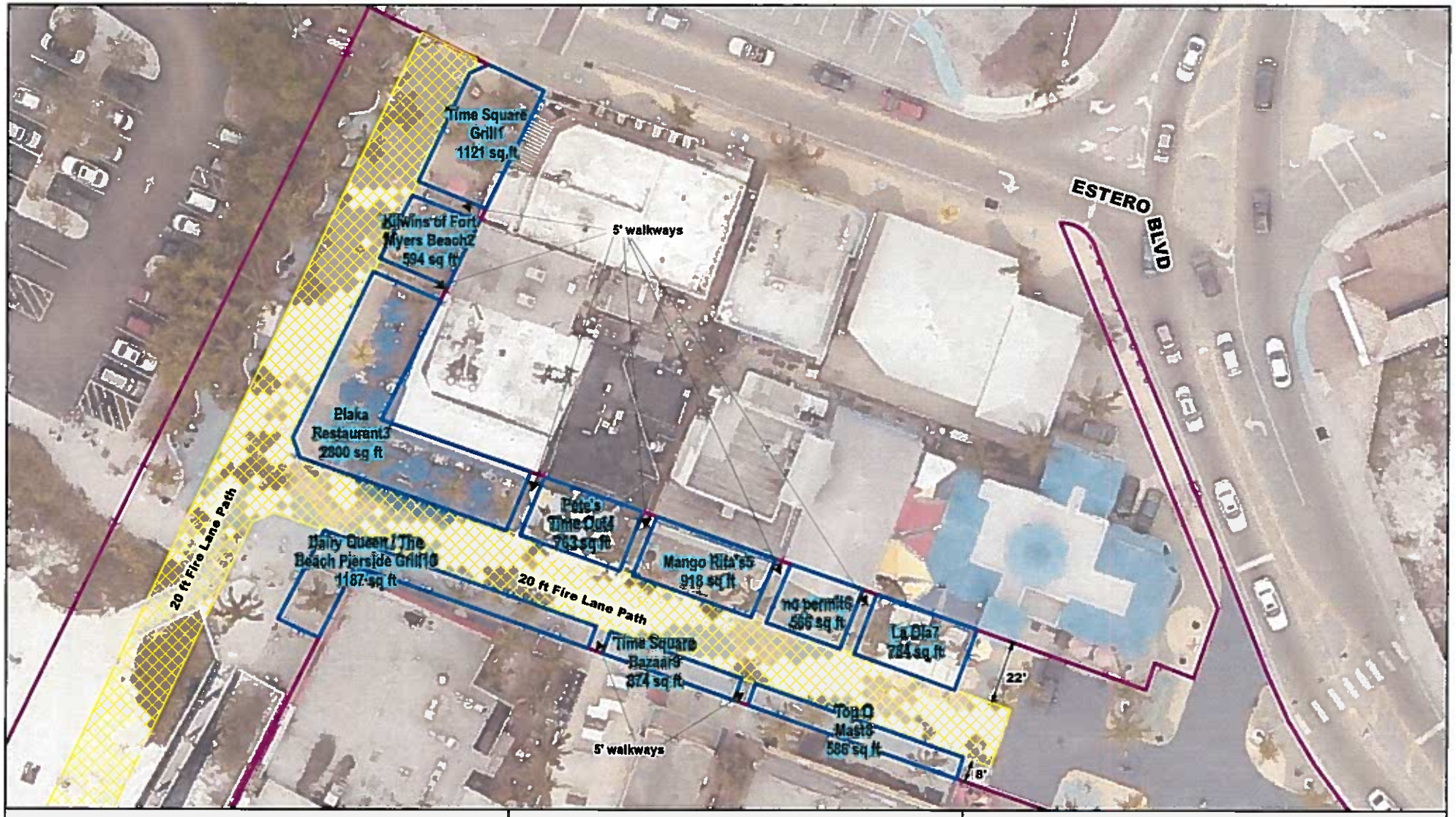
Town of Fort Myers Beach, Florida
DEPARTMENT OF PUBLIC WORKS
2523 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202

Exhibit 1 : Proposed Business Operation Permits at Time Square
20 foot Firelane offset from Existing Permit Areas

Date	Drawn By	Sheet	Scale
6/2/2015	PW GIS	1	1" = 30'

Proposed Business Permit Areas
FireLane
Time Square ROW Area - 43,284 sq. ft.

N



Town of Fort Myers Beach, Florida

DEPARTMENT OF PUBLIC WORKS
2523 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
(239(765-0202

Exhibit 2 : Proposed Business Operation Permits at Time Square

20 foot Firelane offset from Existing Permit Areas

Date	Drawn By	Sheet	Scale
6/2/2015	PW GIS	1	1 " = 30 '

Proposed Business Permit Areas
FireLane
Time Square ROW Area - 43,284 sq. ft.

N

Attachment D

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach, FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Policy

COST IS $4.50 PER SQUARE FOOT FOR THE 2014-2015 FISCAL YEAR.

REVIEW STANDARDS:

3. The following standards are applicable only to Sidewalk Cafes:

A. A sidewalk café permit issued expires annually on September 30.

B. Insurance / hold harmless requirements

i. The operator of the eating or drinking establishment shall enter into a Hold Harmless agreement with the Town that has been approved as to form by the Town Attorney and includes the following:

ii. Ensures that the operator is adequately insured against and indemnifies and holds the Town harmless for any claims for damages or injury arising from sidewalk dining operations, and will maintain the sidewalk seating area and facilities in good repair and in a neat and clean condition:

a. Commercial general liability insurance in the amount of $1,000,000.00, per occurrence, for bodily injury and property damage; and

b. The Town must be named as an additional insured on this policy, and a certificate of insurance containing an endorsement must be issued as part of the policy.

iii. For sidewalk cafes which serve alcoholic beverages, alcoholic-license liability insurance in the amount of $1,000,000.00 per occurrence for bodily injury and property damage. The Town must be named as an additional insured on this policy and a certificate of insurance containing an endorsement must be issued as part of the policy.

iv. Authorizes the Town to suspend authorization of the outdoor seating use, and to remove or relocate or order the removal or relocation of any sidewalk seating facilities, at the owner's expense, as necessary to accommodate repair work being done to the sidewalk or other areas within the right-of-way containing or near the outdoor seating area

C. On-premises consumption of alcoholic beverages. If the request is for a consumption-on-premises permit:

i. The site plan must include a detailed parking plan.

ii. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX, 11C, etc., and the anticipated hours of operation for the business, must be submitted.

4. Revocation of Sidewalk Café Permit

The approval of a sidewalk cafe permit is subject to revocation at all times. A sidewalk cafe permit may be revoked or suspended if it is found that:

A. The permit holder does not have insurance which is correct and effective in the minimum amounts required;

B. Any necessary business or health permit or license has been suspended, revoked or canceled;

C. The permit holder exceeds the approved square footage by placing any additional tables, chairs, etc., beyond the approved area;

D. The permit holder has failed to correct violations of this article or conditions of this permit within 72 hours of receipt of the notice of violations delivered in writing to the property; or.

E. The site is not in compliance with the approved outdoor seating site plan.

APPLICATION CHECKLIST

☑	Original Sidewalk Café Permit Application & applicable fees (due at permit submission);	☑	Original Hold Harmless Agreement;
☐	Original Zoning Certificate Application & applicable fees (due at permit pick-up);	☑	Original Owners Affidavit;
☑	Dimensions site plan showing all existing and proposed site features, dimensioned floor plan; including café seating plan	☑	Copy of a valid certificate of liability insurance in the amount of $1,000,000 showing the City as additionally insured;
☑	Copy of Occupational License	☐	Consumption on Premises Permit if applicable
☑	Outdoor furniture specifications	☑	Current survey

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach, FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Policy

One (1) copy of the approved plans must be stored on-site and made available to Town Code Compliance inspector upon request.

This application shall be reviewed for compliance with Town ordinances and must be approved by the Public Works Department, Fire Rescue, Building, Zoning Department and any other Town Department deemed necessary by Town Staff.

PIERSIDE GRILL + FAMOUS BLUEFISH BAR	MARTIN YORK
BUSINESS NAME	**APPLICANT'S**
1000 ESTERO BLVD UNIT 3	910 NORTH ST FMB 33931
NAME BUSINESS ADDRESS	**APPLICANT HOME ADDRESS**
239.765.7800	239-314-5611
BUSINESS PHONE NUMBER	**HOME PHONE**
239.463.7263	MARTINYORK@YAHOO.COM
BUSINESS FAX NUMBER	**E-MAIL ADDRESS**

Application is hereby made for the Sidewalk Cafe permit described hereon. The undersigned has reviewed this application and all information contained herein is true and correct. I understand that this is an application only and submission thereof does not authorize me to begin operation of the Sidewalk Cafe. I may begin operation only after a permit has been issued. I acknowledge that the application fee is non-refundable. I understand that the application, attachments and fees become public record. I also acknowledge that the payment of the application fee does not guarantee approval. Any questions regarding this process shall be directed to the Public Works Department. I have read and understand the regulations pertaining to sidewalk cafes.

	12.8.15
APPLICANT'S SIGNATURE	**DATE**

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach, FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Policy

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

Pierside Grill, assumes all risks in the operation and maintenance of the permitted area during the term of this permit and any renewal thereto and shall be solely responsible and answerable for all accidents or injuries to persons or property arising out of or caused in pursuant of the Sidewalk Café Permit, or arising out of the outdoor dining operation and/or maintenance of the permitted area and appurtenances thereto. Permit Holder further agrees to maintain its outdoor facilities in good repair and in a neat and clean condition. Permit Holder shall maintain clear pathways as well as all laws and ordinances of the Town, county, state and federal agencies directly relating to the operation of the sidewalk café described in the permit.

Pierside Grill, hereby covenants and agrees in consideration of the grant by the Town of Fort Myers Beach ("Town"), of a permit to operate a Sidewalk Café and for other good and valuable consideration, I hereby agree to defend, indemnify and forever hold the Town, its officers, officials, employees and agents, harmless against any and all claims brought against the Town, its agents, officers, officials and/or employees from all claims (which shall include, but not limited to, the defense of any claim and any and all costs in any judicial or quasi-judicial proceedings and for any and all damages or penalties of any kind or nature), for any loss, damage or injury of any kind or character whatsoever without limitation, including reasonable attorney's fees, sustained by any person or property whatsoever kind and nature, whether direct or indirect, as a result and in relation with the operation and maintenance of a Sidewalk Café on Town owned property whether such damages are due or claimed to be due to any carelessness, negligence or improper conduct of the Permit Holder, or any servant, agent or employee of the Permit Holder.

Pierside Grill, further agrees that at any time the Town may request the temporary removal of the outdoor dining facilities to make repairs to the sidewalk, parking area, water, sewer, or other utilities located on the sidewalk or adjacent to Town property if said facilities interfere with the ability of the Town to access or to make repairs. Pierside Grill agrees to Hold the Town Harmless for any disruption, loss or termination of business during the repair period.

Pierside Grill, further agrees that he/she has obtained and will continue to maintain the required Commercial General Insurance and has listed the Town of Fort Myers Beach as an additional insured on said policy and the certificate of endorsement has been made part of said insurance policy. Said Certificate of Insurance shall be furnished to the Town. It is intended to provide a source, in addition to the Permit Holder, from which the Town may seek payment of (a) Permit Holder's liability for both its own negligence, as well as actual or alleged negligence of the Town and/or (b) the cost of defending such claims.

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach, FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Permit

I HAVE CAREFULLY READ THE FOREGOING HOLD HARMLESS AGREEMENT AND KNOW THE CONTENTS THEREOF AND HAVE SIGNED THIS DOCUMENT AS MY OWN FREE ACT.

I expressly agree that this Hold Harmless Agreement is intended to be as broad and as inclusive as permitted by laws of the State of Florida, and that if any portion thereof is held invalid, it is agreed that the balance shall notwithstanding, continue in full force and effect.

State of Florida
Count of

On this, the day of 8th, 2015 before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by MARTIN YORK (name of corporate officer), MANAGING PARTNER (title), of PIONSIDE GROUP a FLORIDA (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand and official seal

- MARTIN YORK
Applicant's name and signature

Notary Public, State of Florida
My Commission Expires: 12/22/2016

Printed, typed or stamped name of Notary Public
Exactly as Commissioned Linda S. Glover

LINDA S. GLOVER
MY COMMISSION # EE 854693
EXPIRES: December 22, 2016
Bonded Thru Notary Public Underwriters

Personally known to me; or Produced Identification
Type of ID:_____

Town of Fort Myers Beach
Public Works Department
2015-2016 Application

2523 Estero Blvd. Fort Myers Beach, FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Policy

Landowners Consent to Operate A Sidewalk Café

The owner of the premises where you plan to operate your sidewalk café must complete this form.

I certify that I, WILLIAMS WHITAKER, am the legal owner of the land and improvement located at:
(Name)

1000 ESTERO BLVD UNIT 3
(Address)

Further, I give my consent to, PIERHOUSE FT. MYERS BEACH - LTD / MARTIN YORK
(Name of Applicant/Lease Holder)

to maintain a sidewalk café in front of said land and improvement while I am the owner, unless sooner revoked by me. Owner hereby agrees to provide Lessee with a thirty (30) day notice of Revocation. Owner is hereby responsible to provide notice of such revocation to the Town of Fort Myers Beach within ten (10) days of the revocation.

I swear that the information provided herein is true, accurate, and complete.

W. D. Whitaker
Signature of Owner

W. D. WHITAKER
Print Name

(239) 466-7228
Telephone Number

15820 SAN ANTONIO FT. MYERS FL 33908
Address

Notary Public, State of Florida
My Commission Expires: 3/15/2019

Printed, typed or stamped name of Notary Public exactly as Commissioned Dan Kleinmeyer

Personally known to me; or
Produced identification
Type of ID: FL Driver license

NOTARY PUBLIC
DAN KLEINMEYER
Notary Public, State of Florida
Commission# FF 209701
My comm. expires Mar. 15, 2019

Attachment: Times Square Sidewalk Cafe Application (2015-43 : Sidewalk Cafe Policy)

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Zoning Use Certificate

- **Approval of a Zoning Use Certificate does not give you permission to open for business.**
- **Approval of a Zoning Use Certificate is good until September 30th of the current fiscal year, fee of $100.00.**
- **Prior to installing any sign you must obtain a sign permit. For specific details regarding the Town's Sign Code regulations please contact the Zoning Department.**

Outdoor Seating	Number of tables 10 Number of chairs 40

Please describe the operation of your business IN SUFFICIENT DETAIL to enable the Town to determine whether the proposed activity is permitted by zoning regulations. **Depending on the type of business additional documentation and/or a more detailed description of the business could be required.**

Applicant		**Business**	
Print Name and Title	MARTIN YORK MANAGING PARTNER	**Name of Business**	PIONSIDE GRILL AND FAMOUS BLOWFISH BAR
Street Address	1000 ESTERO BLVD UNIT 3	**Street Address**	1000 ESTERO BLVD UNIT 3
Mailing Address City/ State/ Zip	FT. MYERS BEACH, FL 33931	**Mailing Address City/ State/ Zip**	FT. MYERS BEACH FL 33931
Phone Number	239-810-0120	**Phone Number**	239-765-7800
Fax Number	239-463-7263	**Fax Number**	239-463-7263
Email	MARTINYORK@YAHOO.COM	**Email**	PIONSIDE@PIONSIDEGRILL.COM
Number of Employees	55	**Square Feet occupied**	320
Signature	[signature]	**Date**	12.8.15

FOR STAFF USE ONLY (DO NOT WRITE BELOW THIS LINE)

Zoning District:	Paid by: Cash Check No. _____ **(non-refundable)**	Date Paid:	Receipt No.:

The above described business has been determined to be		
		in compliance with use requirements of the district in which the activity is proposed to be located.
		not in conformance with the use requirements of the district in which the activity is proposed to be located.

Additional comments:

Reviewed by:	Approved: Denied:	Date:	Date Applicant Notified:

Town of Fort Myers Beach
Public Works Department
2014-2015 Application

2523 Estero Blvd. Fort Myers Beach FL. 33931
Phone: 239-765-0202 **Fax:** 239-765-0909

Sidewalk Café Permit

Total number of tables and chairs :	Alcohol License:	Permit Number:
10 / 40	BEV4604230	

Staff Review

Department	Signature / Approval Department Designee	Date
Planning		
Risk Management		
Legal		
Zoning		
Public Works		

Additional Comments:

THE BEACH PIERSIDE GRILL
1000 ESTERO BLVD.
FORT MYERS BEACH, FL 33931

6469
63-1413 631
24

12-18-14
Date

Pay to the Order of TOWN OF FORT MYERS BEACH $ 2289 60

TWO THOUSAND TWO HUNDRED EIGHTY NINE 60/100 Dollars

C1 Bank
www.C1Bank.com

For TIMES SQUARE 480 59 AT 1 YR.

⑆063114137⑆6469 10021668⑈

$2160.00
129.60 TAX 4.50 ☐ @ 480
$2289.60

$2880.00 → (320 x $6.00 = 1920.00
172.80 TAX 320 x $3.00 = 960.00
$2880 00

$3052.80
(2289.60) PAID 12-18-14
$763.20 DUE WITH APPLICATION.

PIERHOUSE- FORT MYERS BEACH LTD
DBA PIERSIDE GRILL & FAMOUS BLOWFISH
1000 ESTERO BLVD UNIT 3
FORT MYERS BEACH, FL 33931-2606

8733
63-751/631 11006
6148344283

10.7.15
Date

Pay to the Order of TOWN OF FORT MYERS BEACH $ 763 20

SEVEN HUNDRED SIXTY THREE 20/100 Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
Florida
wellsfargo.com

For BALANCE TIMES SQUARE SEATING

Pierside Grill and Famous Blowfish Bar

cafe seating

= Service access to pierside & DQ

10 TABLES
40 CHAIRS

320 ☐

LEE COUNTY LOCAL BUSINESS TAX RECEIPT

2015 - 2016

Tax Collector

ACCOUNT NUMBER: 9701189

ACCOUNT EXPIRES SEPTEMBER 30, 2016

May engage in the business of:
RESTAURANT

THIS LOCAL BUSINESS TAX RECEIPT IS NON REGULATORY

Location
1000 ESTERO BLVD
FT MYERS BCH FL 33931

BEACH PIERSIDE GRILL THE
PIERHOUSE FT MYERS BEACH LTD
1000 ESTERO BLVD
FT MYERS BCH FL 33931

THIS IS NOT A BILL - DO NOT PAY

PAID 018940-38-1 07/30/2015 01:05
DP500 $50.00

DEPARTMENT OF REVENUE

Certificate of Registration

DR-11
R. 10/11

Issued Pursuant to Chapter 212, Florida Statutes

Certificate Number	Registration Effective Date	Opening Date	Filing Frequency
46-8012087997-3	10/21/96	01/01/97	MONTHLY

This certifies that

THE BEACH PIERSIDE GRILL
PIERHOUSE - FT MYERS BEACH LTD
1000 ESTERO BLVD
FORT MYERS BEACH FL 33931-2808

has met the sales and use tax registration requirements for the business location stated above and is authorized to collect and remit tax as required by Florida law. This certificate is non-transferable.

POST THIS CERTIFICATE IN A CONSPICUOUS PLACE

RICK SCOTT, GOVERNOR

KEN LAWSON, SECRETARY

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF HOTELS AND RESTAURANTS

LICENSE NUMBER	
SEA4604473	NBR. OF SEATS: 300

The SEATING FOOD SERVICE (2010)
Named below IS LICENSED
Under the provisions of Chapter 509 FS.
Expiration date: DEC 1, 2015

PIERHOUSE FT MYERS BCH LTD
BEACH PIERSIDE GRILL (THE)
1000 ESTERO BLVD
FT MYERS BCH FL 33931

NON-TRANSFERABLE

ISSUED: 10/28/2014

DISPLAY AS REQUIRED BY LAW

SEQ # L1410280000884

RICK SCOTT, GOVERNOR

KEN LAWSON, SECRETARY

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIV OF ALCOHOLIC BEVERAGES & TOBACCO

LICENSE NUMBER	SERIES TYPE	TOBACCO
BEV4604290	4COP SRX	DUAL LICENSE

The RETAILER OF ALCOHOLIC BEVERAGES
Named below IS LICENSED
Under the provisions of Chapter 561 FS
Expiration date: MAR 31, 2016
CONSUMPTION ON PREMISES ONLY

PIERHOUSE FT. MYERS BEACH LTD
BEACH PIERSIDE GRILL (THE)
1000 ESTERO BLVD
FT. MYERS BEACH FL 33931

CANNOT MOVE FROM THIS LOCATION

ISSUED: 03/02/2015

DISPLAY AS REQUIRED BY LAW

SEQ # L1503020002281

SURVEY PLAT

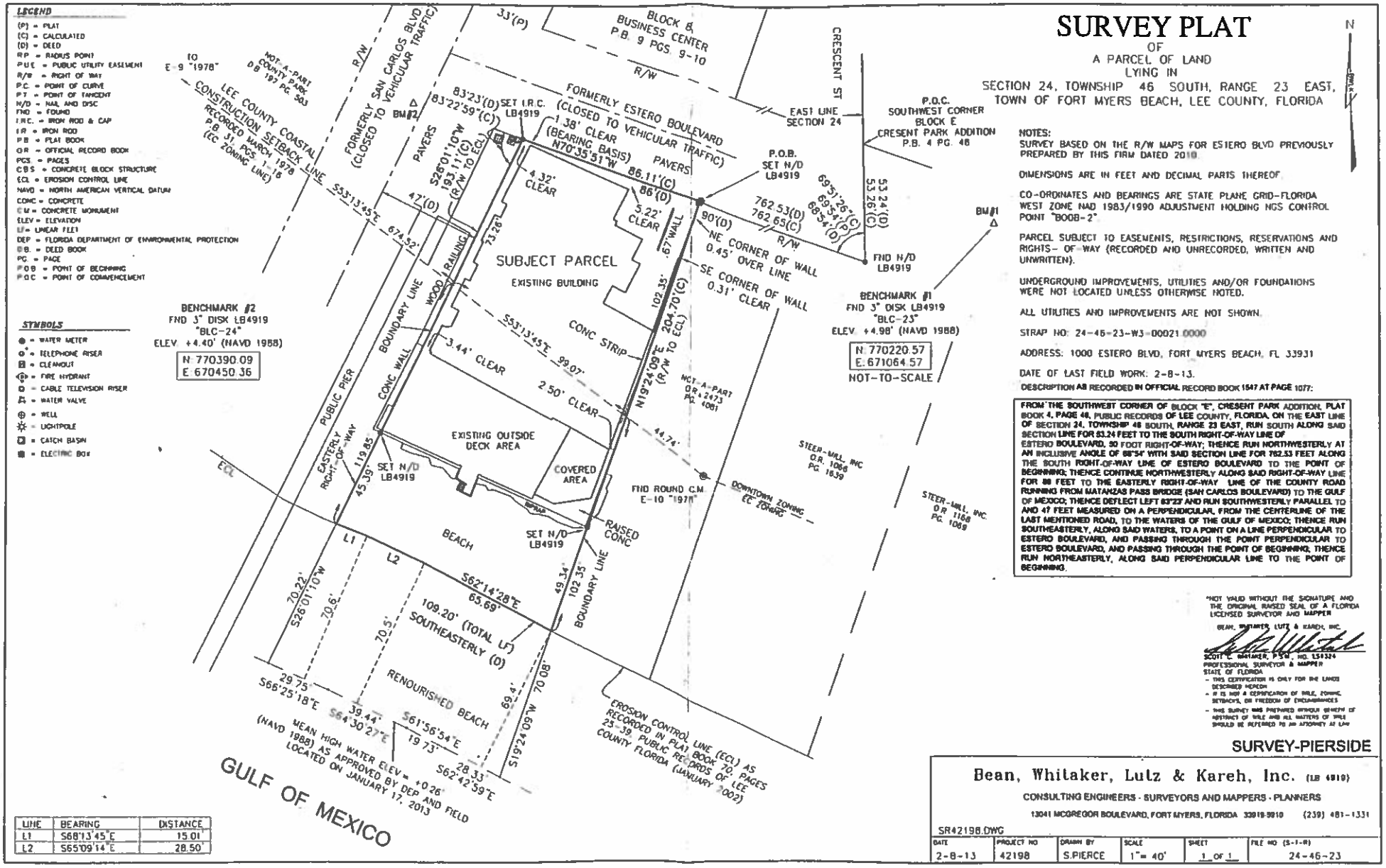
OF

A PARCEL OF LAND

LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA



LINE	BEARING	DISTANCE
L1	S68°13'45"E	15.01'
L2	S65°09'14"E	28.50'

NOTES:

SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM DATED 2010.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

CO-ORDINATES AND BEARINGS ARE STATE PLANE GRID-FLORIDA WEST ZONE NAD 1983/1990 ADJUSTMENT HOLDING NGS CONTROL POINT "BOOB-2".

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

STRAP NO: 24-46-23-W3-00021.0000

ADDRESS: 1000 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 2-8-13.

DESCRIPTION AS RECORDED IN OFFICIAL RECORD BOOK 1547 AT PAGE 1077:

FROM THE SOUTHWEST CORNER OF BLOCK "E", CRESENT PARK ADDITION, PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON THE EAST LINE OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, RUN SOUTH ALONG SAID SECTION LINE FOR 53.24 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD, 50 FOOT RIGHT-OF-WAY; THENCE RUN NORTHWESTERLY AT AN INCLUSIVE ANGLE OF 68°54' WITH SAID SECTION LINE FOR 762.53 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 86 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE COUNTY ROAD RUNNING FROM MATANZAS PASS BRIDGE (SAN CARLOS BOULEVARD) TO THE GULF OF MEXICO; THENCE DEFLECT LEFT 83°23' AND RUN SOUTHWESTERLY PARALLEL TO AND 47 FEET MEASURED ON A PERPENDICULAR, FROM THE CENTERLINE OF THE LAST MENTIONED ROAD, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY, ALONG SAID WATERS, TO A POINT ON A LINE PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT OF BEGINNING; THENCE RUN NORTHEASTERLY, ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

BEAN, WHITAKER, LUTZ & KAREH, INC.

SCOTT E. WHITAKER, PSM, NO. LS4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW

SURVEY-PIERSIDE

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS · SURVEYORS AND MAPPERS · PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-9910 (239) 481-1331

SR42198.DWG

DATE	PROJECT NO	DRAWN BY	SCALE	SHEET	FILE NO (S-T-R)
2-8-13	42198	S.PIERCE	1"= 40'	1 OF 1	24-46-23

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/27/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Bruce Hendry Insurance
711 W. Main Street
Immokalee, FL 34142
L023031

CONTACT NAME
PHONE (A/C, No, Ext): 239-657-3614 FAX (A/C, No): 239-657-646
E-MAIL ADDRESS: karen@brucehendryinsurance.com

INSURER(S) AFFORDING COVERAGE	NAIC#
INSURER A: HOUSTON SPECIALTY INSURANCE CO	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
PIERHOUSE FT MYERS BEACH LTD
DBA PIERSIDE GRILL & FAMOUS BLOWFISH BAR
1000 ESTERO BLVD
FORT MYERS BEACH, FL 33931

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:	Y		HOSPK1000725-01	09/24/2015	09/24/2016	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 1,000,000
								$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ADDITIONAL INSURED: THE TOWN OF FORT MYERS BEACH

CERTIFICATE HOLDER

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH, FL 33931
ADDITIONAL INSURED

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Karen Hendry

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Town of Fort Myers Beach, Florida

DEPARTMENT OF PUBLIC WORKS
2523 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202

Attachment E - Pierview Grill Special Exception Site Location

Case : SEZ2015-0007

Date:	Drawn By:	Sheet	Scale
1/25/2016	PW GIS	1	1 " = 75 '

ZONING
- CF-Community Facilities
- CPD-Comercial Planned Development
- DOWNTOWN
- EC-Environmental Critical
- 1000 Estero B lvd
- Parcel Boundary

N

Attachment F

(FOR STAFF USE ONLY)

REQUEST FOR ZONING COMPLIANCE
FOR APPLICATION FOR
ALCOHOLIC BEVERAGE LICENSE

X Consumption On Premises

___ Consumption Off Premises

Applicants Name PIERHOUSE, FORT MYERS BEACH LIMITED

Business Name SAME

Location Address 1000 ESTERO BLVD, FORT MYERS BEACH, FLA 33931

Mailing Address SAME

Phone No. 941-463-7776

Strap No. S 24 T 46 R 23 A W3 P 00021.0000

Zoning C1(V)

Hearing for Special Exception ___ Yes. X No

If Yes, what is the Hearing No.? N/A

and Resolution No.? HISTORY

(Attach Copy of Resolution)

If No, the applicant must submit sufficient documentation to prove legality of non-conforming C.O.P.

(0106)

ACORSRL

(FOR STAFF USE ONE ONLY)

REQUES
F
ALCOH

✓ Consumption On

___ Consumption Off

ONE MEMO			
	Bryan	DATE 9-30	TIME 11 02 AM PM
FROM	Bill OR Rob	AREA CODE NO. 463 4242	
OF	Pier One	EXT.	
MESSAGE	pier one License Done — speak to our attorneys.		
		SIGNED Diane	
PHONED ☑	CALL BACK ☑	RETURNED CALL ☐	WANTS TO SEE YOU ☐
WILL CALL AGAIN ☐	WAS IN ☐	URGENT ☐	

Applicants Name B.A.L. of Lee County, Inc.

Business Name Pier One Restaurant

Location Address 1000 A Estero Blvd., Ft. Myers, Fl. 33931

Mailing Address Same

Phone No. 463-4242 - 945-0766-home

Strap No. S 24 T 46 R 23 A 00 P 00021.0000

Zoning C-1

Hearing for Special Exception ___ Yes ✓ No

If Yes, what is the Hearing No.?___

and Resolution No.?___

(Attach Copy of Resolution)

If No, the applicant must submit sufficient documentation to prove legality of non-conforming C.O.P.

(0106)

4COPSRX

BPR 42-001
Rev. 01/94

STATE OF FLORIDA

Department of Business and Professional Regulation

Division of Alcoholic Beverages and Tobacco

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE AND CIGARETTE PERMIT

SECTION I

BUSINESS TELEPHONE # _____

TYPE OF LICENSE/PERMIT DESIRED: Check Appropriate Boxes

( ) Alcoholic Beverage License

( ) Cigarette Permit

TYPE OF APPLICATION: Check Appropriate Boxes

( ) New
( ) New - Temporary
( ) Transfer
( ) Transfer - Temporary
( ) Change of Location

( ) Change of Location Temporary
( ) Change in Series
( ) Decrease in Series
( ) Increase in Series

( ) Change of Business Name
( ) Change of Officers/ Stockholders
( ) Correction _____
( ) Other _____

TYPE OF APPLICATION: Check Appropriate Box and List Charter Number, If Applicable

( ) Individual
( ) Corporation
( ) Partnership
(X) Limited Partnership
( ) Charter Number _____

1. ~~Applicant's~~ Corp. Full Name: PIERHOUSE - FORT MYERS BEACH LTD.

2. Business Name: SAME

3. Location Address: 1000 ESTERO BLVD FORT MYERS BEACH, FL 33931
Street City State Zip

4. Mailing Address: SAME
Street City State Zip

If application is for a NEW license/permit, questions 5-8 are not applicable.

5. Current Owner's Name: _____

6. Current Business Name: _____

7. Current Location Address: _____
Street City State Zip

8. License/Permit Number: _____ Current Series: _____

9. Series of License/Permits Desired: (4-COP-SRX) AND (_____).

10. Complete the following if you are an applicant for a quota, special or club alcoholic beverage license. The license is issued pursuant to _____, Florida Statutes or Special Acts, and as such we acknowledge the following minimum requirements must be met and maintained:

I hereby acknowledge receiving a copy of Rule 7A 3.0141 pertaining to the special qualifications and records keeping requirements for a special restaurant license. The attached copy of the rule is made as part of this application.

G&P 09/49/93

11. Does your business include the preparation, service or sale of food? _____. If yes, have you registered with the Division of Hotels and Restaurants as a Public Food Service Establishment?_____, License/Control #_____.

SECTION II

A. List below the names, titles and interest for all officers, directors, stockholders, limited partners and general partners of the business for which this license or permit is sought. Attach extra sheets if necessary.

TITLE/POSITION	NAME	STOCK %
President:		
Vice President:		
Secretary:		
Treasurer:		

B. List below the names and type of interest (i.e. lender, joint account holder, co-signer) for all persons or entities not listed in part (A) above, who have an interest, directly or indirectly, in this application or the business for which the license/permit is sought. This may include a spouse, corporations, or any form of entity which is connected with the business.

NAME	TYPE OF INTEREST

SECTION III

1. SALES TAX:

Applicant Name:_____

Business Name: _____

A. Disclosure Authorization. Section A is to be Completed By Owner Only if Transfer of Alcoholic Beverage License.

I hereby authorize the Department of Revenue to release to the aforementioned applicant and to the Division of Alcoholic Beverages and Tobacco the current status of my account # _____.

STATE OF _____

COUNTY _____

_____

Owner or Authorized Corporate Officer
(Signature Must be Notarized)

The foregoing was ( ) Sworn to and Subscribed OR ( ) Acknowledged Before me this _____Day of _____, 19_____ BY _____, who is ( ) personally known to me OR ( ) who produced _____as identification

_____

Notary Public

B. Disclosure Authorization. Section B is to be Completed by Department of Revenue.

1. This is to verify that the current owner as named in this application has filed all returns and that all outstanding billings and returns have been paid through the period ending_____ or the liability has been acknowledged and agreed to be paid by the applicant. This verification does not constitute a certificate as contained in Section 212.10 (1), F.S. (Not applicable if no transfer involved).

2. Furthermore, the named applicant for an Alcoholic Beverage License has complied with Florida Statutes concerning registration for Sales and Use Tax, and has paid any applicable taxes due.

X_____

(Signed)

_____

(Title)

_____

(Date)

DEPARTMENT OF REVENUE STAMP

SECTION IV (Note: THE DIVISION DOES NOT REQUIRE THAT ITEMS 1 - 3 BE COMPLETED IN ORDER)

Business Name: Pierhouse - Ft Myers Beach LLC

Location Address: 1000 Estero Blvd, Fort Myers Beach, Fla 33931

1. ZONING:

If this applications is for the issuance of an alcoholic beverage license where zoning approval is required, the zoning authority must complete "A" and "B".

If this application is for the issuance of an alcoholic beverage license where zoning approval is not required, the applicant must complete section "B".

To be completed by the Local Zoning Authorities.

A. The location [X] DOES COMPLY [ ] DOES NOT COMPLY with zoning requirements for the sale of alcoholic beverages pursuant to this application for a Series 4COP SRX alcoholic beverage license.

Signed: [signature] Title: [illegible] Date: 07/23/96

B. Is location within the limits of an Incorporated City or Town? [X] Yes [ ] No

If "YES", Name of City or Town: Fort Myers Beach

2. HEALTH:

To be completed by the Division of Hotels and Restaurants, the County Health Authority, Department of Health and Rehabilitative Services, or Department of Agriculture and Consumer Services.

The above establishment [ ] DOES COMPLY [ ] DOES NOT COMPLY with the requirements of the Florida Sanitary Code.

Signed:_____ Date:_____

Title:_____ Agency:_____

3. RIGHT OF OCCUPANCY:

A. Does applicant have a legal right of occupancy to the premises? ..... [ ] YES [ ] NO

B. Does applicant own the property? ..... [ ] YES [ ] NO

C. Does applicant rent, lease or sublease the property? ..... [ ] YES [ ] NO

Name of Landlord: _____

Address of Landlord: _____

Terms of Rental Agreement: _____

D. Is the proposed premises MOVABLE or ABLE TO BE MOVED? .....[ ] YES [ ] NO

E. Is the proposed premises located in a shopping center, mall or office building? .....[ ] YES [ ] NO

F. Is there any access through the premises to any area over which you do not have dominion and control? .....[ ] YES [ ] NO

G. Is the premises occupied by anyone not listed on this application? .....[ ] YES [ ] NO

SECTION V

FEDERAL EMPLOYER'S IDENTIFICATION NUMBER

A. Federal Employer's Identification Number:_____

B. Not Required ( )

C. Not Available ( ) I will submit to your agency as soon as possible.

SECTION VI

These questions must be answered about this business for every person or entity listed. Copies of agreements and documentation to support the financial arrangements must be submitted with this application.

1. Is there a management contract or service agreement in connection with this business?.....[ ] YES [ ] NO

2. Are there any agreements which require a payment of a percentage of gross or net receipts from the business operation?.....[ ] YES [ ] NO

3. Does anyone hold a mortgage or security agreement for this business?.....[ ] YES [ ] NO

4. Have you or anyone listed on this application borrowed money from or accepted money, equipment, fixtures, or anything of value from an owner or representative of a distiller, rectifier, blender, bottler, manufacturer, brewer, distributor, exporter, importer or retailer or secured a loan from any source connected with the alcoholic beverage industry? .....[ ] YES [ ] NO

5. If purchasing the business, what is the purchase price?.....$ _____

6. List the total investment: .....$ _____

A. Total CASH invested: .....$ _____

B. Total LOANS invested: .....$ _____

7. List below the names of all persons, firms or corporations that have or will advance any money for the operation of this business or that will hold any mortgage or security agreement against this business or have the right or ability to receive money from the business.

NAME	TYPE OF LOAN	AMOUNT OF LOAN

SECTION VII

Each corporate applicant must complete this section

Has the applicant corporation been convicted of a felony in this state, any other state, or by the United States in the last, past 15 years?

YES _____ NO _____

If the answer is "YES", please list all of the particulars including the date of conviction, the crime for which the corporation was convicted, and the City, County, State, and Court where the conviction took place.

_____

_____

_____

_____

_____

_____

_____

_____

_____

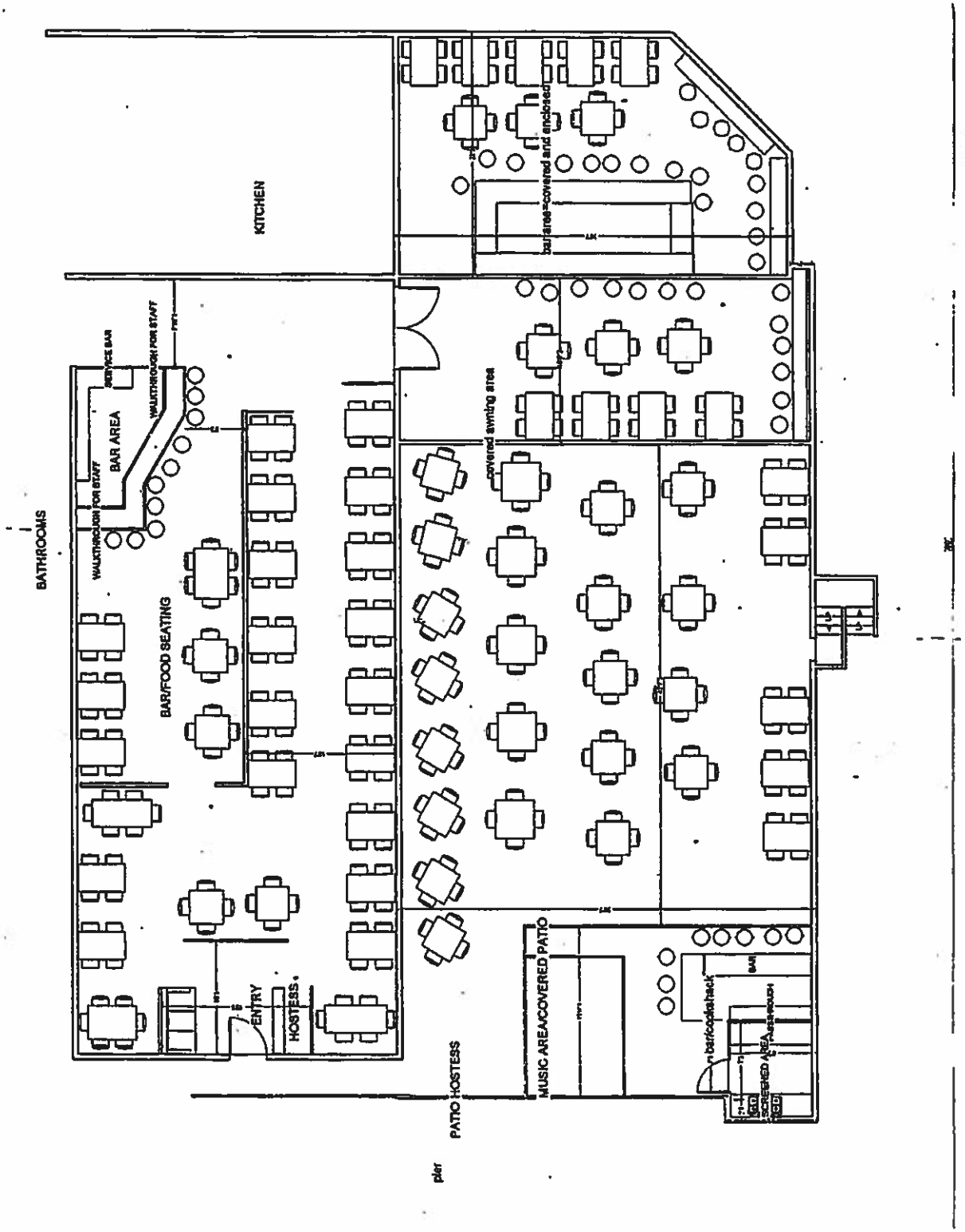
_____

_____

_____

SKETCH OF LICENSED PREMISES

Sketches should be drawn in ink and include all walls, doors, counters, sales areas, storage areas, restrooms, bar locations and any other specific areas which are part of the premises sought to be licensed. A multi-story building where the entire building is to be licensed must show each floor.



AFFIDAVIT OF APPLICANTS

"I, the undersigned individually, or if a corporation for itself, it's officers and directors, hereby swear or affirm that I am duly authorized to make the above and foregoing application and, as such I hereby swear or affirm that the attached sketch or blueprint is substantially a true and correct representation of the premises to be licensed and agree that the place of business, if licensed, may be inspected and searched during business hours or at any time business is being conducted on the premises without a search warrant by officers of the Division of Alcoholic Beverages and Tobacco, the Sheriff, his Deputies, and Police Officers for purposes of determining compliance with the beverage and cigarette laws.

I swear under oath or affirmation under penalty of perjury as provided for in Florida Statutes 559.791, 562.45, and 837.06, that the foregoing information is true and that no other person or entity except as indicated herein has an interest in the alcoholic beverage license and/or cigarette permit and that all of the above listed persons or entities meet the qualifications necessary to hold an interest in the alcoholic beverage license and/or cigarette permit."

STATE OF _____

COUNTY _____

X _____
APPLICANT (Signature Must be Notarized)

_____
APPLICANT (Signature Must be Notarized)

The foregoing was ( ) Sworn to and Subscribed OR ( ) Acknowledged Before me this _____ Day of _____, 19_____
BY _____, who is ( ) personally known to me OR ( ) who produced _____ as identification

_____
Notary Public

AFFIDAVIT OF SELLERS

"I, the undersigned, hereby swear or affirm that I am duly authorized to make this affidavit and do hereby consent, on my behalf or on behalf of the seller, to the above transfer, and represent to the Division of Alcoholic Beverages and Tobacco that the license which is being transferred is as shown in the application and that a bona fide sale in good faith has been made to the within applicant of the business for which the foregoing transfer of license is sought."

STATE OF _____

COUNTY _____

_____
SELLER OR AUTHORIZED OFFICER (Signature Must be Notarized)

_____
SELLER OR AUTHORIZED OFFICER (Signature Must be Notarized)

The foregoing was ( ) Sworn to and Subscribed OR ( ) Acknowledged Before me this _____ Day of _____, 19_____
BY _____, who is ( ) personally known to me OR ( ) who produced _____ as identification

_____
Notary Public

For Division Use Only - do not write below this line

CODE: City _____ County _____

FEIN NUMBER _____

TYPE: _____ FEE: _____

_____ _____

_____ _____

TOTAL: _____

District Office Date Stamp

LICENSE # _____ AUDIT # _____

ENTRY DATE: _____ BY: _____

MICROFILM DATE: _____

Approved by: _____ Date: _____ Audited: _____ Unaudited: _____

G&P 09/49/93

DBR-42-016 (REV. 1/91)

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
TALLAHASSEE, FLORIDA 32399-1021

CITY NAME

Lawton Chiles, Governor

Janet E. Ferris, Secretary

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1992 THRU MARCH 31, 1993

LICENSE/PERMIT NO. 46-01439 SERIES 2COP FEE $ 392.00 58878 AUDIT NUMBER 479432

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL

LOCATION
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931

02/21/92 392.00 PAID
C0808__80

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS
DISTRICT OFFICE COPY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DBR-42-016 (REV. 5/90)

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
TALLAHASSEE, FLORIDA 32399-1021

CITY NAME

XXXXXXXXXXXXXXX
XXXXXXXXXXXX
Bob Martinez, Governor XXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXX
Stephen R. MacNamara, Secretary

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1991 THRU MARCH 31, 1992

LICENSE/PERMIT NO. 46-01439 SERIES 4COP FEE $ 427.00 58878 AUDIT NUMBER 436427

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL

LOCATION
1000 A ESTERO BLVD

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL

03/12/91 427.00 PAID
C01277323

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS
DISTRICT OFFICE COPY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

BR-723-L(R 5/89)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1990 THRU MARCH 31, 1991

CITY NAME

Bob Martinez, Governor
Stephen R. MacNamara, Secretary

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439 SERIES 2COP FEE $ NO FEE 58878 AUDIT NUMBER 409113

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
DECREASE IN SERIES

LOCATION
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931

09/25/90 NO FEE PAID
C05411365

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DBR-723-L(R 5/89)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1990 THRU MARCH 31, 1991

Bob Martinez, Governor
Steven MacNamara, Secretary

0
CITY NAME

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439SRX | SERIES 4COP | FEE $1,785.00 | 58878 AUDIT NUMBER | 392098

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL

02/27/90 1,785.00 PAID
C05411365

MAILING ADDRESS

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

R-723-L(R 6/88)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1989 THRU MARCH 31, 1990

Bob Martinez, Governor
Steve MacNamara, Secretary

0
CITY NAME

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439SRX | SERIES 4COP | FEE $1,750.00 | 58878 AUDIT NUMBER | 357678

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL

03/21/89 1,750.00 PAID
C05275346

MAILING ADDRESS

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1988 THRU MARCH 31, 1989

0
CITY NAME

LICENSE/PERMIT NO. 46-014398RX | SERIES 4COP | FEE $ 175.00 | 58878 AUDIT NUMBER | 319815

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
TRANSFER-MISCELLANEOUS CHANGE(S)
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931

01/27/89 175.00 PAID
C04281219

MAILING ADDRESS

LEE
COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1988 THRU MARCH 31, 1989

0
CITY NAME

LICENSE/PERMIT NO. 46-01439SRX SERIES 4COP FEE $1,750.00 AUDIT NUMBER 58878 282020

ISSUED TO:
PIER ONE
PIER ONE INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

MAILING ADDRESS
PIER ONE INC
899 CYPRESS LK CIRCLE
FT MYERS FL Y 33907

03/17/88 1,750.00 PAID
C04176134

LEE COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1987 THRU MARCH 31, 1988

268 FORT MYERS
CITY NAME

LICENSE/PERMIT NO. 46-014399RX SERIES 4COP FEE $1750.00 AUDIT NUMBER 58878 259882

ISSUED TO:
PIER ONE
PIER ONE INC
NEW FULL YEAR
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

MAILING ADDRESS
PIER ONE INC
899 CYPRESS LK CIRCLE
FT MYERS FL 33907

05/22/87 1750.00 PAID
C04086821

LEE COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

(FOR STAFF USE ONLY)

REQUEST FOR ZONING COMPLIANCE
FOR APPLICATION FOR
ALCOHOLIC BEVERAGE LICENSE

✓ Consumption On Premises

___ Consumption Off Premises

Applicants Name B.A.L. of Lee County, Inc.

Business Name Pier One Restaurant

Location Address 1000 A Estero Blvd., Ft. Myers, Fl. 33931

Mailing Address Same

Phone No. 463-4242 - 945-0766-home

Strap No. S 24 T 46 R 23 A 00 P 00021.0000

Zoning C-1

Hearing for Special Exception _____ Yes ✓ No

If Yes, what is the Hearing No.?_____

and Resolution No.?_____

(Attach Copy of Resolution)

If No, the applicant must submit sufficient documentation to prove legality of non-conforming C.O.P.

(0106)

4COPSRX

,0; 2-COP
,-89-0644-A

/HB of Pinellas, Inc., d/b/a PATRICKS PUB / Pinellas County / FINAL ORDER: Based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED that Licensee's Alcoholic Beverage License #62-04210; Series 2-COP, be and the same is hereby revoked effective 15 days after service of this Final Order on Licensee.

This revocation shall be lifted and the consequent impairment of Licensee's qualifications to hold said license shall cease upon compliance with the following:

Pay to the AB&T Division within 15 days after service of this Final Order on Licensee, a $250 Civil Penalty.

Pay Investigative Costs to the AB&T Division in the amount of $544.74 within 15 days after service of this Final Order on Licensee.

Forfeiture of all seized evidence consisting of two (2) JOKER POKER Machines. Forfeiture of illegal income from said machines and illegal payoffs in the amount of $3,532.25 within 15 days after service of this Final Order on Licensee.

849.01 Keeping a gambling house – 1 count.

849.08 Gambling – 7 counts.

7A-3.0031 Possession of gambling paraphernalia – 1 count.

7A-3.004 Possession of coin operated machine – 1 count.

August 21, 1990
21-00865; 2-APS
FT 21-89-1072

PAVILLION MOBIL / Collier County / CONSENT AGREEMENT: Licensee agrees to the revocation of Alcoholic Beverage License #21-00865; Series 2-APS, unless the Licensee complies with the following provisions. The AB&T Division agrees that this license revocation will be suspended upon compliance with the following terms, which the AB&T Director deems appropriate for the charges filed in this administrative case in settlement of this matter as follows:

Payment to the AB&T Division of a $1,500 Civil Penalty within 15 days after notification that this Consent Agreement has been accepted by the AB&T Division Deputy Director.

Licensee shall serve a ten (10) days license suspension to begin within 15 days upon notification that this Consent Agreement has been accepted by the AB&T Division Deputy Director.

Licensee shall pay $38 Investigative Costs, by separate check, to the AB&T Division, within 15 days after notification that this Consent Agreement has been accepted by the AB&T Division Deputy Director.

In the event Alcoholic Beverage License #21-00865 is revoked, this revocation shall not impair the Licensee's qualifications to be issued a new Alcoholic Beverage License at some future date upon satisfying the terms of this Consent Agreement.

562.11(1)(a) Sale of alcoholic beverages to underaged persons – 3 counts.

August 20, 1990 Signed
August 21, 1990 Clerked
54-00684; 6-COP-SRX
KW 54-89-0183-A

Donald Allen Henley, d/b/a PELICAN POST RESTAURANT & LOUNGE / Monroe County / FINAL ORDER OF DISMISSAL: Comes Now, the AB&T Division Director hereby DISMISSES the charges in the above styled matter and as grounds therefore would state that Licensee's Alcoholic Beverage License #54-00684; Series 6-COP-SRX, was revoked through Final Order dated May 3, 1990, Administrative Case #: KW 54-89-0081-AC, rendering this instant case moot.

DISMISSED CHARGES DUE TO REVOCATION OF A/B LICENSE BY

FINAL ORDER 5/3/90:

212.14/561.29(1)(a) Failure to pay sales tax to the Florida Department of Revenue – 1 count.

August 27, 1990
46-01439; 4-COP-SRX
FT 46-89-0069-A and
FT 46-89-0774-A

PIER 1 / Lee County / ADDENDUM TO CONSENT AGREEMENT: Licensee wishes to amend Section II of the Consent Agreement accepted by AB&T Division Deputy Director as of June 19, 1990 in settlement of Administrative Case #: FT 46-89-0069-A (DOAH Case #: 89-6199) and FT 46-89-0774-A (DOAH Case #: 90-3041), as follows:

Licensee agrees to voluntarily reduce Alcoholic Beverage License #46-01439; Series 4-COP-SRX, to a beer and wine consumption (2-COP) license. Application to decrease in series to 2-COP must be submitted to the Fort Myers AB&T Division District Office on or before ten (10) days after notification that this amended Consent Agreement has been accepted by the AB&T Division Deputy Director.

This voluntarily reduction of license will not prejudice Licensee from obtaining a Quota Liquor License or other type of license at some future date. The qualifications for Licensee or Corporate Officers to have either a direct or indirect interest in a Special Restaurant License (SRX) shall be impaired for a period of five (5) years, four (4) years of which is suspended, provided there is no violation by Licensee during the first year of impairment.

This impairment only applies to Licensee, at this present location and business at 1000-A Estero Boulevard, Fort Myers Beach, Florida. In addition, Licensee may immediately discontinue any paperwork and reports required under present Consent Agreement. Licensee acknowledges all Special Restaurant License requirements remain in effect until license is reduced in series.

[Pursuant to the 6/19/90 Consent Agreement, Licensee has already paid a $5,000 Civil Penalty.]

FT 46-89-0069-A: 561.20/7A-3.015 Failure to meet 51% gross revenue of SRX License requirements.

561.20/7A-3.014 Failure to maintain records on premises.

FT 46-89-0774-A: 561.20(2)(a)(4) Failure to maintain adequate seating required under SRX license requirements.

August 17, 1990 Signed (Willingham)
September 11, 1990 Clerked
55-00019; 1-COP
AX 55-89-1159-A

PIZZA HUT / S.R. 200 and Adams Road, Fernandina Beach / Nass County / CONSENT AGREEMENT: Licensee agrees to the revocati of Alcoholic Beverage License #55-00019; Series 1-COP, unless Licensee complies with the following provisions. The AB&T Divisi agrees that this license revocation will be suspended upon complia with the following terms, which the AB&T Director deems appropri for the charges filed in this administrative case in settlement of this m ter as follows:

Payment to the AB&T Division of a $500 Civil Penalty within 15 days after notification that this Consent Agreement has been accepted by the AB&T Division.

In the event Alcoholic Beverage License #55-00019 is revoked, revocation shall not impair the Licensee's qualifications to be issu new Alcoholic Beverage License at some future date upon satisf the terms of this Consent Agreement.

562.13 Unlawful employment of underaged persons – 8 counts.

September 6, 1990
38-00222; 2-APS
AK 38-89-0816-A

PRESTO FOOD STORE #27-026 / Highlands County / CONS

DBR 42-001
Rev. 7/91

STATE OF FLORIDA
Department of Business Regulation
Division of Alcoholic Beverages and Tobacco

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE
AND CIGARETTE PERMIT

SECTION I

BUSINESS TELEPHONE # 813-463-0242

TYPE OF LICENSE/PERMIT DESIRED: Check Appropriate Boxes

(✓) Alcoholic Beverage License
( ) Cigarette Permit

TYPE OF APPLICATION: Check Appropriate Boxes

( ) New
( ) New - Temporary
( ) Transfer
( ) Transfer - Temporary
( ) Change of Location
( ) Change of Location Temporary
( ) Change in Series
( ) Decrease in Series
(✓) Increase in Series
( ) Change of Business Name
( ) Change of Officers/Stockholders
( ) Correction
( ) Other

TYPE OF APPLICANT: Check Appropriate Box and List Charter Number, If Applicable

( ) Individual
(✓) Corporation
( ) Partnership
( ) Limited Partnership
(✓) Charter Number

1. ~~Applicant~~ Corp's Full Name: B. A. L. OF LEE CTY, INC.
2. Business Name: PIRE ONE RESTAURANT
3. Location Address: 1000 A ESTERO BLVD, FT. MYERS BCH, FL. 33931
   Street City State Zip
4. Mailing Address: SAME
   Street City State Zip

If application is for a NEW license/permit, questions 5-8 are not applicable.

5. Current Owner's Name: ROBERT A. ASSENZIO + JAMES BOPPER
6. Current Business Name: PIRE ONE RESTAURANT
   Street City State Zip
7. Current Location Address: 1000 A ESTERO BLVD, FT. MYERS BCH, FL. 33931
   Street City State Zip
8. Current License/Permit Number: 46-01439 Current Series: 2COP
9. Series of Licenses/Permits Desired: (4-COP-SRX) AND ( ).
10. Complete the following if you are an applicant for a quota, special or club alcoholic beverage license. The license is issued pursuant to _____, Florida Statutes or Special Acts, and as such we acknowledge the following minimum requirements must be met and maintained:

X

X

I hereby acknowledge receiving a copy of Rule 7A 3.0141 pertaining to the special qualifications and records keeping requirements for a special restaurant license. The attached copy of the rule is made as part of this application.

11. Does your business include the preparation, service or sale of food?_____.
If yes, have you registered with the Division of Hotels and Restaurants as a Public Food Service Establishment?_____. License/Control #_____.

SECTION II

(A). List below the names, titles and interest for all officers, directors, stockholders, limited partners and general partners of the business for which this license or permit is sought. (Attach extra sheets if necessary).

TITLE/POSITION	NAME	STOCK %
President:		
Vice President:		
Secretary:		
Treasurer:		

(B). List below the names and type of interest (i.e. lender, joint account holder, co-signer.) for all persons or entities not listed in part (A) above, who have an interest, directly or indirectly, in this application or the business for which the license/permit is sought. This may include a spouse, corporations, or any form of entity which is connected with the business.

NAME	TYPE OF INTEREST

Business Name: _____

Location Address: _____

SECTION IV (NOTE: THE DIVISION DOES NOT REQUIRE THAT ITEMS 1-3 BE COMPLETED IN ORDER)

1. ZONING:

If this application is for the issuance of an alcoholic beverage license where zoning approval is required, the zoning authority must complete "A" and "B".

If this application is for the issuance of an alcoholic beverage license where zoning approval is not required, the applicant must complete section "B".

To be completed by the Local Zoning Authorities.

A. The location (✓) Does Comply ( ) Does Not Comply with zoning requirements for the sale of alcoholic beverages pursuant to this application for a Series 4 COP-SRX alcoholic beverage license.

Signed: [illegible] Title: Principal Planner Date: Oct. 23/92

B. Is location within the limits of an Incorporated City or Town? ( ) YES (✓) NO

If "YES", Name of City or Town _____

2. HEALTH:

A. To be completed by the Division of Hotels and Restaurants, the County Health Authority or Department of Health and Rehabilitative Services.

The above establishment ( ) Does Comply ( ) Does Not Comply with the requirements of the Florida Sanitary Code.

Signed: _____ Date: _____

Title: _____ Agency: _____

3. RIGHT OF OCCUPANCY

	(YES)	(NO)
A. Does applicant have a legal right of occupancy to the premises?.....	_____	_____
B. Does applicant own the property?.....	_____	_____
C. Does applicant rent, lease or sublease the property?.....	_____	_____

Name of Landlord: _____

Address of Landlord: _____

Terms of Rental Agreement: _____

_____

_____

SECTION III

1. SALES TAX: Owners Name:_____

Business Name:_____

A. Disclosure Authorization. Section A is to be Completed By Owner Only if Transfer of Alcoholic Beverage License.

I hereby authorize the Department of Revenue to release to the aforementioned applicant and to the Division of Alcoholic Beverages and Tobacco the current status of my account #_____.

Sworn to and Subscribed

before me this_____

day of_____, 19___.

_____
Owner or Authorized Corporate Officer Must be Notarized

_____
Notary Public

My Commission Expires:_____

B. Disclosure. Section B is to be Completed by Department of Revenue.

1. This is to verify that the current owner as named in this application has filed all returns and that all outstanding billings and returns have been paid through the period ending_____ or the liability has been acknowledged and agreed to be paid by the applicant. This verification does not constitute a certificate as contained in Section 212.10(1), F.S. (Not applicable if no transfer involved).

2. Furthermore, the named applicant for an Alcoholic Beverage License has complied with Florida Statutes concerning registration for Sales and Use Tax, and has paid any applicable taxes due.

_____
(Signed)

_____
(Title)

_____
(Date)

DEPARTMENT OF REVENUE STAMP

IR-42-016 (REV. 1/91)

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
TALLAHASSEE, FLORIDA 32399-1021

CITY NAME

awton Chiles, Governor

Janet E. Ferris, Secre...

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1992 THRU MARCH 31, 1993

LICENSE/PERMIT NO. 46-01439 SERIES 2COP FEE $ 392.00 58878 AUDIT NUMBER 479432

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931 02/21/92 392.00 PAID
C0808...80

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

LEE
COUNTY

MAILING ADDRESS
DISTRICT OFFICE COPY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

IR-42-016 (REV. 5/90)

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
TALLAHASSEE, FLORIDA 32399-1021

CITY NAME

Stephen H. MacNamara, Secretary

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1991 THRU MARCH 31, 1992

LICENSE/PERMIT NO. 46-01439 SERIES 2COP FEE $ 427.00 58878 AUDIT NUMBER 436427

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931 03/12/91 427.00 PAID
C01277323

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

LEE
COUNTY

MAILING ADDRESS
DISTRICT OFFICE COPY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

-723-L(R 5/89)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

CITY NAME

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1990 THRU MARCH 31, 1991

b Martinez, Governor
...n MacNamara, Secretary

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439 SERIES 2COP FEE $ NO FEE 58878 AUDIT NUMBER 409113

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
DECREASE IN SERIES

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931 09/25/90 NO FEE PAID
C05411365

LEE

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS

COUNTY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DBR-723-L(R 5/89)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

Bob Martinez, Governor
Stephen MacNamara, Secretary

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1990 THRU MARCH 31, 1991

CITY NAME

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439SRX SERIES 4COP FEE $1,785.00 58878 AUDIT NUMBER 392098

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL R 33931 02/27/90 1,785.00 PAID
C05411365

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS LEE COUNTY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DBR-723-L(R 6/88)

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

Bob Martinez, Governor
Thomas Bible, Secretary

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1989 THRU MARCH 31, 1990

CITY NAME

DISTRICT OFFICE COPY

LICENSE/PERMIT NO. 46-01439SRX SERIES 4COP FEE $1,750.00 58878 AUDIT NUMBER 357678

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931 03/21/89 1,750.00 PAID
C05275346

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS LEE COUNTY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DBR-723-L

ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1988 THRU MARCH 31, 1989

CITY NAME

LICENSE/PERMIT NO. 46-01439SRX SERIES 4COP FEE $ 175.00 58878 AUDIT NUMBER 319815

ISSUED TO:
PIER 1
BAL OF LEE COUNTY INC
TRANSFER-MISCELLANEOUS CHANGE(S)
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

BAL OF LEE COUNTY INC
1000 A ESTERO BLVD
FT MYERS FL 33931
01/27/89 175.00 PAID
C04281219

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

MAILING ADDRESS LEE COUNTY

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1988 THRU MARCH 31, 1989

CITY NAME: D

LICENSE/PERMIT NO. 46-01439SRX | SERIES 4COP | FEE $1,750.00 | AUDIT NUMBER 58878 | 282020

ISSUED TO:
PIER ONE
PIER ONE INC
RENEWAL
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

MAILING ADDRESS:
PIER ONE INC
899 CYPRESS LK CIRCLE
FT MYERS FL Y 33907

03/17/88 1,750.00 PAID
C04176134

LEE COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

DISTRICT OFFICE COPY

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1987 THRU MARCH 31, 1988

CITY NAME: 26B FORT MYERS

LICENSE/PERMIT NO. 46-014398RX | SERIES 4COP | FEE $1750.00 | AUDIT NUMBER 58878 | 259882

ISSUED TO:
PIER ONE
PIER ONE INC
NEW FULL YEAR
THIS LICENSE MAY NOT BE MOVED FROM THIS LOCATION
FOR CONSUMPTION ON THE PREMISES ONLY

LOCATION:
1000 A ESTERO BLVD
FT MYERS

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

MAILING ADDRESS:
PIER ONE INC
899 CYPRESS LK CIRCLE
FT MYERS FL 33907

05/22/87 1750.00 PAID
C04086821

LEE COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

Attachment G

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 99- 39

WHEREAS, the Beach Pierside Grill, the property owner petitioned the Town approve a variance in the Commercial District to allow a trellis over the existing concrete deck that extends 74 feet +/- seaward of the 1988 CCCL; and

WHEREAS, the subject property is located at 1000 Estero Blvd., Ft. Myers Beach, in S24-T46S-R23E, Lee County, FL.; and,

WHEREAS, the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00021.0000; and,

WHEREAS, the LPA at a public hearing gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and made their recommendations to the Town Council.

WHEREAS a hearing was held and the council considered the following criteria, recommendations and testimony of the staff, testimony from the applicant and from the public.

IT IS THE FINDING of this council that the following exist:

a. That there are/~~not~~ exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district;

b. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);

c. That the variance is/~~not~~ the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;

d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

e. That the condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

NOW THEREFORE BE IT RESOLVED THAT THE VARIANCE IS DISAPPROVED/APPROVED 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 variance requested.

The trellis is approved for the area shown on the survey for William Whitaker and stamped "Received August 2,1999, Zoning Counter".

The trellis may not be enclosed or covered.

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	yes
Daniel Hughes	yes
John Mulholland	yes
Garr Reynolds	yes
Ray Murphy	yes

APPLICATION DULY ~~DENIED~~/GRANTED this 11th day of October, 1999.

ATTEST:

By: _____
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By: _____
Raymond P. Murphy, Mayor

Approved as to form by:

_____
Richard V.S. Roosa, Town Attorney

Resolution Number 99-39 Errata

As reflected in the minutes of October 11, 1999, under VI PUBLIC HEARING: THE BEACH PIERSIND GRILL, the resolution on the second page should read :

NOW THEREFORE BE IT RESOLVED THAT THE VARIANCE IS ~~DISAPPROVED~~/APPROVED 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 variance requested.

This correction was identified upon approval of the minutes on November 1, 1999.

Attachment H

Town of Fort Myers Beach

Community Development Department

COP in EC Report to LPA

October 6, 2011

Prepared by:

Walter Fluegel, MBA, AICP

Community Development Director

Marilyn Miller

Town Attorney

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5. Considerations in crafting an ordinance

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2. COP Inventory
3. Town Council Minutes
4. LPA Minutes
5. Staff Memos to Town Council on COP
6. Staff Memos to LPA on COP
7. Ordinances
8. Murphy Report
9. LPA Chair Memo on COP from May, 2011 LPA Meeting
10. Map of Establishments with COP Adjacent to EC
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15. Top O' Mast
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21. DiamondHead
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26. Holiday Inn
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28. Breakers Econo Lux Inn
29. Exhibit depicting impact of EC Zoning District

Executive Summary

This report is intended to provide a comprehensive examination of the Consumption on Premises (COP) issue, specifically as it relates to extending service from a licensed premise into the Environmentally Critical (EC) zoning district. The report provides a summary overview of the current COP debate, which has been ongoing with the Local Planning Agency (LPA) since October, 2008. The fact that the current debate has spanned over 3 years, with no clear resolution, warrants a more comprehensive examination of the issues, misconceptions and ramifications.

This report examines the issues that are pertinent to developing a stronger basis for the critical decision making necessary to formulating an ordinance that effectively regulates COP. For example, the current debate at the LPA has centered upon a belief that COP should not be allowed in the EC Zoning District (which is also the Recreation Future Land Use), which would be worthy of consideration, but for Town Council's rejection of the LPA's interpretation, the precedents set by previously approved COPs and the lack of clear policy prohibition in the Comprehensive Plan. Accordingly, the more objective and defensible approach to developing a regulatory framework would be to focus on identifying methods of mitigating impacts of COP in EC (i.e. specific conditions of approval that mitigate potentially negative impacts) and identifying specific geographic areas wherein the potential impacts of COP may be greater.

For example, our analysis of the previously approved COP's in EC indicates that careful scrutiny was given to potentially negative impacts and specific conditions were established to mitigate the potential impacts. Further, those prior approvals contained unambiguous findings of fact that any potential negative impacts on the Environmentally Critical zoning district had been mitigated by the conditions of approval. Accordingly, these prior approvals should be viewed as precedents, but more importantly they provide guidance on the specific conditions developed as a means of mitigating potentially negative impacts of COP in EC.

Of the 18 properties identified as having COP licenses adjacent to the EC Zoning District, 12 of them were approved for COP in the EC Zoning District. Of those approved for COP in EC, 7 are located in the Downtown District and 5 are located outside the Downtown District. Of the 5 approved outside the Downtown District, 4 are resorts. Of the 12 approved for COP in EC, 5 or 6 are resorts, 4 are restaurants/bars, 1 is a restaurant and 1 is a bar/cocktail lounge. Of the 12 approved for COP in EC, 7 are approved directly on the sandy beach and 6 have no restrictions on outdoor music. The most common method of approval has been Special Permit/Exception, with 7 having been granted by SP/SE. Of the 4 resorts outside the Downtown District, 2 were granted by CPD rezoning. 5 of the COP approved for COP in EC, were approved by the Town, the rest were approved by the County prior to incorporation. One of the more significant findings

of our analysis was that no COP requested in EC has apparently ever been denied. Given the number of COP approvals in EC, it is difficult to conclude that the Comprehensive Plan intended to restrict further expansion of COP in the Recreation Future Land Use. Of equal concern in this regard, is the lack of discussion during the public hearings for these approvals regarding the issue of COP in EC and Recreation Future Land Use. In reviewing the transcripts for all of these approvals, it is clear that the larger concern expressed during public hearings related to concerns about the noise associated with outdoor entertainment.

Our analysis concludes that COP has already been established as a permissible use in the EC Zoning District, with varying methods of approval. While the methods of approval are valid means of controlling COP in EC, the lack of consistency of methods or established guidelines is an area of concern. Further, we have concluded that there has been an overall lack of consistency in conditions of approval, including dominion and control, hours of operation and entertainment restrictions. The lack of consistency in terms of conditions of approval confirms our concern about the lack of an appropriate regulatory framework.

Having said that, it should be noted that there has been some historic consistency in limited form, as it relates to the approval of COP in EC. For instance, the majority of COP approvals in EC were granted for establishments within the Downtown District and those granted outside the Downtown District were primarily granted to the larger resorts in Town, two of which were granted by CPD rezoning. Special Permits/Exceptions granted 7 of the 11/12 COP approvals. We believe there is some precedent for requiring future approvals within the Downtown District to require a Special Exception and those outside the Downtown District to be limited to resorts by CPD rezoning. Further, some of the approvals contained conditions that provide a strong basis for formulating a meaningful ordinance. More importantly, based upon Staff observations during the last tourist season, there are some conditions that provide a stronger basis for mitigating potentially negative impacts. For example, well-defined methods of dominion and control have more success in preventing the migration of alcohol from one property to another.

Comprehensive Plan Implications

LPA Comprehensive Plan Interpretation (LPA Resolution 2009-24):

The current discussion about COP was initiated at the October, 2008 LPA Meeting (Exhibit 4), with a broad dialogue on COP in general, including hours of service and licensing requirement. At that meeting, Interim Community Development Director, Frank Shockey, indicated in his staff memo (Exhbit 4) that the Town Manager had contracted with a consultant to prepare a study regarding the COP issue. However, the memo and dialogue at the October LPA meeting dealt with the COP issue in a fairly broad brush and did not include any specific conversation regarding COP in EC. A review of Town records indicates that on September 29, 2008, Town Manager, Scott Janke, entered into an ongoing planning services contract with Murphy Consulting Group. Based upon this contract, the Town Manager engaged Murphy Consulting Group to prepare a report on COP.

At the December 9, 2008 LPA meeting (Exhibit 4), the "Policy Considerations and Options-Consumption of Alcoholic Beverages" report (Exhibit 8), prepared by Murphy Consulting Group, was presented to the LPA. While the report was more comprehensive in nature, dealing with the expanse of COP related issues, including COP in the Recreation Future Land Use category, the discussion by the LPA focused in on COP in Recreation Future Land Use. Several LPA members indicated their belief that further expansion of COP in Recreation Land Use should be prohibited, which included some of the following comments.

Ms. Kay stated that she is confused about the whole issue and is not sure the LPA should be ready to take this on without further research as to what exactly is being proposed. Ms. Shamp stated that the Comp Plan, policy 4B8, is clear in that those parts of the Gulf beaches that lie seaward of the 1978 Coastal Construction Line *are* for recreation, and recreation uses are parks, schools, libraries, bathing beaches, beach access points and related public facilities. She added that there may be a situation in this review where it says that the FLUM Category doesn't provide for this expansion, but it also doesn't prohibit it, then the LPA needs to close the loopholes to protecting the public interests. Ms. Kay pointed out that the report summary states that *"the Plan does not clearly provide for an expansion of COP onto the Gulf beaches, nor does it clearly prohibit it..."* and stated that the LPA needs to work on clarifying that. Ms. Shamp asked how many establishments currently serve alcohol seaward of the 1978 CCL because they own that property privately and Mr. Murphy opined that there are three. Mr. Van Duzer agreed, adding that this is a family island and it ought to remain that way. He suggested sending forward the LPA's feeling that there should not be any additional COP on the beach side, other than the three grandfathered items, without going through the lengthy process of the "special exception." Ms. Kay agreed as well. Ms. Shamp also agreed and said that the LPA needs to close loopholes

to control the process. She added that the LPA is consistently fair in its decisions and the issue of non-conformity needs to be addressed, keeping the whole process fair and concise. Ms. Kay referred to the report under "On-Premises Consumption" on pg. 39, wherein the report sounds pro-expansion, and suggested that the LPA just add *"in order to best make the findings and conclusion necessary to support the NON-permanent expansion of COP uses only onto the gulf beaches of the Town may wish to amend the LDC to indicate that this expansion is NOT consistent with the Plan."* She suggested just making that statement negative rather than positive. Mr. Van Duzer moved to accept the report and request the Town manager to go forward to have a redraft of the LDC that combines the issues, with a consultant to give recommendations as to the changes needed to be made to the LDC to make it more concise. The motion was seconded by Mr. Weimer. Discussion ensued about what the process would be as far as an ordinance or recommendation, etc. Motion was carried 6-0, with Mr. Yerkes on an excused absence.

At the April 28, 2009 LPA Meeting (Exhibit 4) Town Staff and Murphy Consulting Group presented draft code amendments to Chapter 34 regarding Open Container and Liquor License requirements. The draft language was rather extensive in nature. Again, some of the LPA conversation focused on the issue of COP in EC. Ms. Shamp was concerned about the expansion of alcohol service onto the beach and the LPA was still not clear about who can have alcoholic beverages on the beach. Mr. Murphy explained that the places that currently have alcoholic service down to the beach would become non-conforming.

At the August 11, 2009 LPA Meeting (Exhibit 4), the LPA moved to table the conversation regarding the draft COP ordinances until after a Workshop could be held with Town Council. At that meeting, Ms. Shamp agreed that this is getting out of hand and cautioned that before moving forward and incurring huge legal fees, the LPA should be clear as to what the Council wants them to address; she suggested postponing this until they've had an opportunity to meet with the Council and clarify the issues.

On September 17, 2009, a joint workshop of the Town Council and the LPA was held. One of the topics of the joint workshop was COP. The topic of COP in EC came up and there was specific conversation from Town Council about developing a more equitable regulatory scheme for dealing with COP in EC. For instance, the problem of one establishment being allowed to serve in EC and the establishment next door is not allowed to serve in EC. There was a general consensus that there was a lack of clear policy direction in the code about how to regulate COP in EC and that requests were being handled on an individual basis without any clear policy direction from the land development code. Also, there was a conversation about the fact that approved Special Exceptions for COP in EC have varying conditions of approval. Mr. Van Duzer spoke about the fact that the historical role of the LPA had been to act upon specific direction from Town Council and not to drive policy. Also, the was a consensus that the LPA needed to be more productive and focused and that direction from Council should be the driving force in policy direction and not an independent initiative of the LPA.

At the October 27, 2009, LPA Meeting, during the Future Work Activities agenda item, the LPA directed Staff to draft a statement to Council saying that "the LPA, in its consideration of the consultant's report, did not deem that the expansion of open container onto additional properties would not be appropriate.....or something to that effect."

At the November 10, 2009 LPA Meeting, Staff presented a draft resolution (LPA Resolution 2009-24) on COP as directed by the LPA at the October 27, 2009 LPA Meeting. The LPA voted 5 to 1 to approve the resolution. Some of the discussion at this meeting included the following comments. Ms. Shamp asked for a general consensus for support of the resolution as a whole. There was a majority consensus and Ms. Shamp then asked for individual comments. **Ms. Kay moved to accept the resolution, changing the words on the second page wherein it states "whereas the LPA finds that the expansion of the on premises consumption of alcoholic beverages onto the gulf beaches does not protect remaining natural resources and does not preserve the small town character of the Town, and does not protect residential neighborhoods against commercial intrusions, and therefore would not accord the comprehensive plan objectives, etc." "Now therefore be it resolved that the LPA recommends that the Town Council for the Town of Fort Myers Beach does restrict further expansion of on premises consumption of alcoholic beverages on the gulf beaches in the Town of Fort Myers Beach."**

Seconded by Mr. Weimer;
Vote: Motion passed 5-1 with Mr. Mandel opposing.

As an observation, it should be noted that it is difficult to understand the LPA's basis for this recommendation, inasmuch as, no specific rationale for the findings of fact were made in the deliberation or resolution and no specific policy language was referenced during the deliberation. Further, the deliberation did not address the precedents created by previously approved COPs in EC, nor did it address some of the more permissible language in the consultant's report. Accordingly, the LPA's interpretation is not supported by any of the documentation that was submitted to the LPA.

At the November 15, 2010 Town Council Workshop, Staff presented a Memo, dated, November 8, 2010 (Exhibit 5) that reviewed LPA 2009-24 and provided options for Council's consideration. At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution and by rejecting the LPA's Resolution, Councilhas made the determination that COP is a permissible use in EC. Since this was a Legislative Interpretation by Council, as provided for in Chapter 15 of the Comprehensive Plan, a text amendment would be required to reverse that determination. Further, in a subsequent discussion and motion, Council decided that the Land Development Code was the appropriate place to regulate permissible uses such as COP and directed Staff to prepare an ordinance that treats COP in EC as a permitted ancillary use. The

motion and vote were based upon the Blue Sheet and Memo prepared for Council's consideration (Exhibit 5).

At the January 11, 2011 LPA Meeting, during the Community Development Director's Report, Staff provided the LPA with an update on the status of Town Council's December 6, 2010 Action on LPA Resolution 2009-0024 whereby Council rejected the LPA's recommendation. Further, the LPA was advised that Staff would be preparing an ordinance to regulate COP in EC, but there was no formal timeline at this point. The LPA Chair advised, "when it does come before the LPA, they will need a very thorough presentation with all the needed information."

At the April, 2011 LPA Meeting, Staff presented LPA with a preliminary working draft of one conceptual approach for regulating COP on the beach for existing establishments and another conceptual approach for regulating new establishments through the Special Exception Process. The purpose of this workshop, from Staff's perspective, was to focus on regulatory requirements (i.e. standard conditions of approval that would be applied to all existing or future establishments with COP in EC), such as hours of service, signage, restricting the movement of alcohol from one property to another, environmental standards (such as bio-degradable plastic cups with the establishments name on the cup), maintenance requirements (including maintaining the beach free of litter and debris) and grounds for revocation of the extension of premises. The transmittal memo was very clear that this was intended to be a working draft and that the discussion was meant to be a workshop discussion. Further, the transmittal memo was clear that Staff was looking for input on procedural approaches and regulatory standards. A copy of Staff's memo to LPA and working draft ordinance is provided in Exhibit 6.

At this meeting, several LPA members opined that they were opposed to COP in EC and expressed their intent to recommend denial of any ordinance that proposes allowing COP in EC. Further, the LPA's discussion focused heavily on the Comprehensive Plan interpretation. Staff reminded the LPA that Council had rejected the LPA interpretation and that the discussion needed to focus on the Land Development Code. Further, the LPA opined that they would need much more information than was provided, without specifying any details or a consensus on the information they felt was necessary.

Based upon LPA input at the April LPA meeting, Staff prepared a more comprehensive summary of the overall COP issue, with specific focus on the LPA's prior Comprehensive Plan interpretation and Town Council's rejection of that interpretation and provided it to the LPA at the May, 2011 LPA meeting. A copy of Staff's memo to the LPA is provided as Exhibit 6. The memo included a summary of Council's rejection of the LPA's Comprehensive Plan interpretation on COP, a summary of potential regulatory approaches, an overview of Staff's concerns about the need to establish a regulatory framework for COP, a summary of potential conditions of approval/regulatory requirements, a copy of Jerry Murphy's report, "Policy

Considerations and Options: Consumption of Alcoholic Beverages," a copy of LPA Resolution 2009-24, a copy of Staff's November 8, 2010 memo on COP in REC Future Land Use and an inventory of existing licensed COP establishments adjacent to the EC Zoning District.

At this meeting the LPA Chair presented her May 10, 2011 memo (Exhibit 9), "COP Expansion In The Environmentally Critical Zone/Recreation FLUM." The memo outlined the Chair's analysis that the Code prohibits expansion of COP in EC. Also, LPA member Ryffel presented a memo outlining alternative approaches to regulating COP in EC by allowing consumption, but not service.

That meeting began with the Town Manager addressing the LPA on the importance of crafting a well thought out and comprehensive COP ordinance to address the current lack of any regulatory requirements on the existing establishments with COP in EC.

Staff then presented a summary of their memo. During public input, the owner of Nemo's expressed a need for a level playing field that provide a fair standard. Three members of the public expressed their opposition to expansion of alcohol on the beach.

The LPA Chair presented her memo on COP in EC and iterated her belief that the Land Development Code prohibits it. Commissioner Ryffel presented his alternative approach to allowing consumption in EC, accessory to permitted establishments. In the discussion of this alternative approach, it appeared that there were opposing view among member of the LPA, with some in favor of recommending denial of any ordinance to deal with COP in EC and the other favoring Commissioner Ryffel's alternative approach.

Based upon LPA input at the May, 2011 LPA meeting, at the June, 2011 LPA Meeting, Staff prepared a workshop discussion (Exhibit 6), which included reviewing the LPA Chair's Memo regarding her interpretation of COP in EC/REC. Further, the conversation focused on the alternative regulatory approach proposed by Commissioner Ryffel. The memo outlined the potential regulatory approaches and conditions of approval/regulatory requirements. At this meeting, the LPA expressed an interest in dual LPA Resolutions, including one that expressed their opposition to COP in EC. Also, it should be noted, that other than LPA member Ryffel's attempt to introduce a new regulatory approach, the LPA provided no direction on regulatory approaches or any conditions of approval/regulatory requirements. Staff's preliminary review of LPA member Ryffel's approach indicates that further consideration of that approach is warranted. The LPA expressed concerns about the potential for Burt Harris claims arising from Lani Kai and Top O Mast. Staff discussed the issues created by the initial creation of the EC Zoning District, in that it bifurcated properties into two separate zoning districts. In addition, the LPA Chair raised the issue of vested rights of existing establishments.

Again, some LPA members expressed a preference towards an outright prohibition on COP in EC. Staff reminded the LPA that they can forward two separate resolutions, with one expressing their desire for prohibition and another providing their input on potential regulatory approaches. Staff again emphasized a need to receive input from LPA on potential regulatory approaches.

Based upon the lack of clear consensus and the Chair's belief that the Land Development Code prohibits COP in EC, Staff embarked upon a comprehensive review and legal assessment of all approved COP's adjacent to EC, in order to determine if there is any consistency in regulatory requirements. Further, Staff believed that, given the LPA Chair's memo, it would be beneficial to review previously approved COPs for policy interpretations and precedents in those approvals to verify whether the assertions in that memorandum were supported by the history of existing businesses with COP in EC.

At the July, 2011 Meeting, Staff presented a timeline of COP regulations, dating back to Lee County requirements, beginning in the 1970's to current Town requirements. Further, the inventory of all beachfronts COP's revealed 9 establishments where COP was granted by either the Town or County in the EC Zoning District. Exhibit E provides a timeline of all applicable County and Town ordinances dealing with COP and an exhibit depicting the impact of the EC Zoning District on bifurcating properties between two zoning districts. It should be noted that the initial assessment of these 9 previously approved COPs, indicates that, for some of the approvals, there was substantial policy considerations given to approving COP in EC. For example, some of these COP's were approved by Special Exception, subsequent to the incorporation of the Town and the approving resolutions gave specific contemplation to the fact that the COP use was being approved over the EC zoning line. These approvals are important to a determination of what precedent currently exists.

Based upon the fact that more comprehensive efforts to identify, assemble and conduct thorough assessments of the legal standing previously granted COP approvals (State Licenses, Town approvals and County approvals prior to incorporation) where necessary, Staff proposed a major revision to the project schedule, in order to allow Staff adequate time to research and prepare a comprehensive study of previously granted approvals.

Staff's current work effort is focused on acquiring all documentation of previously approved COPs, including a review of all meeting minutes, and reviewing County and Town ordinances/resolutions regulating alcohol. This effort will include a review of any changes in state alcohol regulations. Further, the effort will include additional public records requests from the State Division of Alcohol, Beverage and Tobacco and a review of Lee County records as well.

Comprehensive Plan History:

On November 10, 2009, a report, titled "Policy Considerations and Options: Consumption of Alcoholic Beverages" (Exhibit 8) was presented to the LPA for their consideration. The report was commissioned by a former Town Manager and prepared by a former Community Development Director. With respect to the issue of COP on the Gulf Beaches, the report concluded, "The Plan does not clearly provide for the expansion of permitted COP onto the Gulf beaches, neither does it clearly prohibit it." At that LPA Meeting, as memorialized in LPA Resolution 2009-24 (Exhibit 5), the LPA voted 5 to 1 to recommend that the Comprehensive Plan: *"does restrict further expansion of on-premises consumption of alcoholic beverages on the Gulf beaches within the Town of Fort Myers Beach."* The effect of this action by the LPA was to recommend to Town Council, in the form of a Legislative Interpretation as provided for in Chapter 15 of the Plan, that Council determine that it was the intent of the Plan to further restrict the expansion of COP in the Recreation Future Land Use category.

At the November 15, 2010 Town Council Workshop, Staff presented a Memo, dated, November 8, 2010 (Exhibit 5) that reviewed the issue of COP in EC and provided potential options for Council's consideration. At Council's direction, Staff crafted several regulatory options for Council's consideration. At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution and by rejecting the LPA's resolution, Council's vote, in essence, deemed COP to be a permissible use on the beaches. Since this was a Legislative Interpretation, as provided for in Chapter 15 of the Comprehensive Plan, it would now require a text amendment to reverse this determination. Further, in a subsequent motion and discussion, Council determined that the Land Development Code was the appropriate place to regulate permissible uses and directed Staff to prepare an ordinance dealing with COP in EC as a permitted ancillary use. The motion and vote were based upon the Blue Sheet and Memo prepared for Council's consideration (Exhibit 5).

In addition to the Comprehensive Plan Policy analysis that underscored the Murphy Report and Staff's memos to Council (Exhibit 5), consideration must be given to prior policy interpretations. We will delve deeper into the ramifications of these prior policy interpretations in Section 4 of this report. However, for the purposes of Comprehensive Plan considerations, it is important to note that there have been numerous requests for COP approved in the Recreation (REC) Future Land Use, and this provides sufficient precedent that COP in REC has been historically treated as a permissible use. Further, we take guidance from the fact that through all the research conducted, there appears to be no instance where a request for COP in REC has been denied.

In reviewing the records of COPs approved in REC, the COP timeline provided in Exhibit 1 depicts the timeframes for approvals prior to and subsequent to incorporation of the Town. An

important consideration is the fact that the 1978 CCCL line apparently served as the basis for the creation of the REC Future Land Use category and the EC Zoning District. This is an important consideration because the significance of that line pre-existed Town land use and zoning. This significance shows up in the public hearing records for those COPs approved by the County prior to the incorporation of the Town. In those approvals, the Hearing Examiner and County Staff acknowledged that the 1978 CCCL line delineates where construction was no longer permissible from that line. However, their decisions establish that while a structure (other than a deck) may not be allowed to be built seaward of the line, the same rationale does not follow with uses. In other words, the line was time and again memorialized as a construction line, but not as a line that prohibited continuity of uses. In fact, many of those early decisions gave great consideration to environmental impacts of the COP use crossing the 1978 CCCL line and in all instances such use was deemed to be compatible with the environmental considerations.

Regulatory History/Land Development Code

COP Ordinance Historical Overview:

Exhibit 1 depicts the timeline for the development of ordinances regulating alcohol, including both County Ordinances (prior to incorporation of the Town) or Town Ordinances (subsequent to incorporation of the Town). The more relevant ordinances are County Ordinances 76-9 and 81-41 and Town Ordinances 96-6, 98-14, 03-03 and 04-17. County Ordinance 76-9 established a Special Permit requirement for COP's within 500 feet of a school or church. County Ordinance 81-41 established a Special Permit requirement for COP in certain zoning districts. Town Ordinance 96-6 established the Town's Special Permit requirement for COP. Ordinance 98-14 adopted the Town's Comprehensive Plan, thus establishing the Recreation (REC) Future Land Use category. Town Ordinance 03-03 adopted the Town's current Land Development Code (Chapter 34), the Environmentally Critical (EC) Zoning District and created the current COP regulatory framework.

One of the more critical elements that should be understood is the impact that the creation of the REC (Recreation) Land Use category and EC Zoning District had on properties fronting on the beach. Exhibit 29 depicts the pre- and post- EC impact that EC had on properties located adjacent to the beach. Prior to Town Ordinances 98-14 and 03-03, properties adjacent to the beach, enjoyed one continuous land use and zoning for the limits of their entire property. Subsequent to the creation of REC and EC, the zoning and land use on any given property adjacent to the beach became bifurcated between the two land uses and two zoning districts. In order to understand the intent of this bifurcation, Staff reviewed all of the Town Council meeting minutes (and all available LPA minutes) during the development of the Comprehensive Plan. In

reviewing those minutes, it appears that the main objective was to create a line conterminous with the 1978 CCCL line, which would limit "construction rights" seaward of the line, but more importantly, provide a means of limiting allowable density for all properties adjacent to the beach by one-half.

LPA Chairs Memo on LDC Considerations:

The following review of LDC implications of COP in EC was provided by the LPA Chair, Joanne Shamp at the May 10, 2011 LPA Meeting. Following each paragraph, Staff has provided our review and observations in italics.

COP EXPANSION IN THE ENVIRONMENTALLY CRITICAL ZONE/RECREATION FLUM AND LDC REVIEW PREPARED BY *JOANNE SHAMP*, CHAIR, LPA - May 10, 2011

The Town Council rejected LPA Resolution 2009-24, deciding that the Land Development Code is the more appropriate place to identify more specific permissible uses relating to the expansion of COP onto the beaches in the EC Zone/Recreation FLUM. The LPA provides its role as described in the LDC as follows: **Sec.34-120(4)** "The function of the Land Planning Agency in accordance with LDC is to review proposed land development changes and amendments thereto, and make recommendation to the Town Council as to their consistency with the Comprehensive Plan"; and **Sec.34-120(2)** "The function and duty of the LPA is to prepare policies for guiding land uses in the Town in order to preserve the unique and natural characteristics of the island."

Staff Response: *As indicated by the Chair, any amendment to the land development code requires LPA review and a recommendation to Town Council. Further, as the Chair indicates, the LPA's role is to prepare "principles and policies for guiding land uses.."As contemplated in Chapter 15 of the Comprehensive Plan,, the LPA made a formal recommendation with repect to its interpretation to Town Council in the form of LPA Resolution 2009-24, which Town Council rejected. However, it should be noted that the LPA's role, as it relates to the particular interpretation embodied in LPA Resolution 2009-24, is more specifically described in LDC Section 34-120(8), which states,* ***"Make recommendations to town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan."*** *As clearly indicated in this code section, the LPA's role is to make a recommendation to Town Council.*

In reviewing the LDC, references are found to indicate that the proposed COP expansion is prohibited, LDC **Sec.14-3(a)(15)** states that it is "unlawful or prohibited for any person to do, conduct or permit any commercial activities on the beach or dunes not explicitly authorized by the code or other Town ordinances." There exists no explicit authorization of this COP expansion in the Comp Plan (see report "Policy Considerations and Options: Consumption of Alcoholic Beverages"), the LDC or in Town ordinances

Staff Response: *The code language referenced by the Chair is a valid consideration, and clearly by interpretation, COP has been allowed in EC, as demonstrated in Section 4 of this report. However, the language referenced in this code section should be viewed in the context of the language in the immediately following code section (14-3(b)), which states, "**Permits may be issued by the Town Manager for activities otherwise prohibited by this section**, which are found to be necessary for reasonable accommodation of persons with disabilities; **adjunct to a lawfully existing activity**; for the conduct of a civic ore educational activity; for the conduct of scientific research; **or** for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under this code for any of the above activities, the standards and procedures for issuance shall be governed by this code."In response to the Chair's observations, the aforementioned language is more troubling, in as much as, this language leaves the Town susceptible to challenge, as the language suggests that a lawfully existing use landward of the beach, should be allowed to extend on to the beach and be treated as a permitted adjunct use. For the purposes of the conversation, as it relates to COP, the language referenced by the Chair (14-3(a)(15)) is less troublesome than the language in Section 14-3(b). Given the number of lawfully permitted establishments with COP adjacent to EC, this code section provides a strong rationale for developing a regulatory framework for COP in EC.*

The Land Development Code's strongest prohibition to the proposed COP expansion is **LDC Sec.34-1574(b)** "Except in instances of overriding public interest, new roads, private land development, or the expansion of existing facilities within Wetlands or on the sandy beaches that are designated in the Recreation category in the Fort Myers Beach Comprehensive Plan shall be prohibited." No evidence of overriding public interest has been presented to the LPA.

Staff Response: *From Staff's perspective, this section is clearly meant to be applicable to "construction" and "development activities" and not "uses" in EC. Also, this language is superseded by Code Sections 34-652(e) and 6-366, which establish specific provisions for the kinds of structures that can be built in EC and the approval process for same. It is important for the LPA to understand the fundamental difference between uses and structures and how they are dealt with from a zoning perspective. For example, it is common for a use to be allowed where a building may not be allowed or for a building to be allowed where a use is not allowed.*

LDC regulations support the legal relationship between the Comprehensive Plan and the LDC regarding COP expansion on the beaches. LDC **Sec.34-652(a)** designates the purpose of the EC zoning is to designate that the preservation of beaches is critical to the Town of Fort Myers Beach and restricts the uses. In **Sec.34-652(b)** the application of the EC district is intended to prevent a public harm by precluding the use of land for purposes that adversely affect a defined public interest. **?Sec.34-609?** states that where there are conflicts between the LDC and the Comp Plan regarding development in zoning districts, the Comp Plan will prevail.

Staff Response: *Section 34-652(d) identifies broad permitted uses and 34-652(e) and 6-366 identifies other permissible uses and structures through Special Exception. However, as previously mentioned, Section 14-3(b) suggests that some uses may be permitted by virtue of being permitted ancillary uses. The Chair references Sec.34-609. Since there is no such section, it appears that she meant to reference 34-619. We agree the Comprehensive Plan does prevail when conflicts arise. However, we believe that Council's rejection of the LPA's interpretation rendered the LDC the more appropriate place to deal with this issue. Further, had it been the intent for the code or the Comprehensive Plan to specifically prohibit COP in EC or REC, Code Section 34-620 (g) provides a list of specifically prohibited uses, which would have been the appropriate place to identify the prohibition.*

The LDC limits COP expansion "by right" in the EC Zone. **Sec. 34-652(d)** states that no land use in the EC Zone shall be permitted by right except those permitted by the Fort Myers Beach Comprehensive Plan and **Sec. 34-613(c)** states that development rights may be limited by other factors such as the Fort Myers Beach Comprehensive Plan and conditions on special exceptions and special permits.

Staff Response: *While the Chair may be correct in stating that COP is not clearly an outright permitted use in EC neither is it contemplated that COP should be treated as a permitted principal use. The current dialogue should remain focused on how to restrict COP as an ancillary use and under what circumstances it should be allowed. Again, consideration should be given to Section 14-3(b, which could be interpreted to suggest that COP may be a permissible ancillary use.*

COP expansion is also not permitted as an accessory or ancillary use in the Land Development Code. LDC **Sec.34-1262** states that premises used for the purpose of the retail sale, service or consumption of alcoholic beverages must conform with all applicable Town regulations. Those beachfront COP premises that are parcels split by zoning boundaries are regulated by **Sec.34-617(b)**: "when a parcel is split between two or more zoning districts each parcel is limited only to the permitted uses allowed in that portion, plus allowable accessory uses", while "accessory

uses may not be placed on portions of the parcels that do not contain the principal use to which they are incidental and subordinate."

Staff Response: *This interpretation is inconsistent with the precedents mentioned in Section 4 of this report. Based upon the prior approved COP's in EC, the determinations have been made that COP is a permissible use in EC. For instance, the LPA recently recommended approval of two COP's by Special Exception in EC and made a specific determination of consistency between the use of COP and EC zoning.*

LDC **Sec.34-677(b) (3)** refers to the regulation of the sale of alcoholic beverages outdoors in Sec.34-1264, which states that "the area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit covering the existing and proposed expanded area" **(Sec.34-1264(g).**

Staff Response: *Code Section 677 is misquoted in the Chair's comments and it appears she is referencing Section 34-678(b)(3). This code section applies specifically to the Downtown zoning district and is more narrowly applicable to that outdoor area between the front of the restaurant and the right-of-way (i.e. street). However, we agree with the Chair that a new or amended application is required and we are still looking to the LPA for guidance on what the process should be. This request for guidance goes back to the May, 2011 LPA meeting.*

With regard to a proposed administrative approval of such COP expansion, **Sec.34-1264(a)(2)(a).2** states that administrative approval may not be granted for outdoor seating within 500 feet of a park or dwelling unit under separate ownership. In addition, **Sec.34-1264(a)(1)** states that administrative approval of the expansion of on-premises consumption of alcoholic beverages may not be the appropriate action when there is a record of public opposition to a similar use at that location. The **Comp Plan** provides further safeguards, for example requiring the Town to provide procedural protection comparable to the public hearing process in the Mixed Residential FLUM category

Staff Response: *This is an area that a comprehensive COP ordinance should address. For instance, should beach furniture be treated the same as outdoor seating? Further, it does not appear that an administrative approval could be utilized to expand the service area delineated by a prior approved Special Exception; in fact it may require an amendment to the Special Exception, which can only be achieved by another Special Exception. Accordingly, these sections may need to be modified with a more comprehensive COP ordinance.*

A restriction or prohibition to this commercial expansion is addressed by Comp Plan **POLICY 4-C-2** directing that intensity in any FLUM category is limited by provisions of the Comp Plan and LDC. **Comp Plan POLICY 4-C-2** requires the LDC to specify maximum commercial intensities using the floor-area-ratio (FAR). The maximum intensity may not include land in the Recreation FLUM according to LDC **Sec.34-633(2)**: *"a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map."* Land in the Recreation FLUM category is not available for commercial expansion.

Staff Response: *From staff's perspective, this section applies to structures and buildings. Intensity measures are not intended for sand, and this is reinforced by precedent established in prior COP approvals whereby the LPA did not give consideration to this issueand approved COP's regardless of whether such approval was for decks and patios in EC or directly on the sand.*

Expansion of area for this COP service would require additional parking, per **Sec.34-20209(b)(1)** which states that "existing uses enlarged in terms of floor area shall provide additional parking spaces in accordance with Sec.34-2020(d)(2)h.2" and **Sec.34-2020(d)(2)h.2.** which states additional parking is required for outdoor seating for restaurants, bars and cocktail lounges.

Staff Response: *Staff has reviewed these sections and agrees that an amendment will be necessarybecause a precedent has been established by the bulk of the previously approved COP's in EC that didn't assign a parking requirement to service and/or consumption areas on the sand. Consideration should be given to the miles of beach that have no inherent parking requirement and the potential ramifications of assigning a parking requirement to sunbathing on the beach.*

COP expansion and beach definitions are limited by the new mean high water line (ECL) and state owned beachfront in the current navigation/re-nourishment project per **(F.S.161.191 (1)**: "the ECL recorded in accordance with a beach re-nourishment project shall be the new high water line and all land seaward of that line are the sovereign property of the State of Florida."

Staff Response: *This is another area wherein the collective wisdom of the LPA will be of assistance in crafting an ordinance. For example, for those areas where beach renourishment has been completed, the ECL may be the seaward line for control or for measurement from that line. However, in areas where there is not an ECL, should MHW prevail?*

Limiting the expansion of COP to specific zoning districts would fall under several regulations of the Comp Plan and LDC. The **FLUM ELEMENT** of the **COMP PLAN** states that the Town can insist on protection of its private realm and the enhancement of its public realm when evaluating for new commercial development, providing for protection of residential interests. Even in the Downtown area, the map in **Sec.34-672, Figure 34-6** of the Downtown Zoning district shows the beaches and land seaward of the Coastal Construction Line (CL) to be outside the zoning district, as if intentionally protected from land use development.

Staff Response: *Once again, there is a difference between construction (i.e. development) and the use of land. But for the bifurcation of property created by EC, we may not be having this conversation and the entire process would continue to be regulated solely by the Special Exception process. The Town has made this distinction for previously approved COP's in EC, as well as for the well thought out code requirements for PAL and PWVL in EC. Further, it should be kept in mind that beach furniture is an outright permitted commercial use in EC. Accordingly, there is ample precedent of commercial uses being allowed in EC. More important, those precedents, i.e. PAL and PWVL, were established based upon a sound regulatory framework, with reasonable conditions of approvals and regulatory requirements to mitigate the potential impacts of the commercial uses.*

Historic Approvals & Legal Determinations

Previously approved COPs adjacent to EC:

This section will provde details about the 18 COP's that have been approved adjacent to the EC Zoning District, including how they were approved, when they were approved, whether they extended into EC, how they extend into EC, geographic location (i.e. Downtown or outside Downtown), current legal status, method of dominion and control of COP area, hours of service and restrictions on entertainment. Exhibit 2 provides an inventory of all COP's adjacent to EC, the previously mentioned parameters and the numbering identification corresponds to the numbers below, as well as to Exhibit 10, which provides a map of the locations. This narrative section will conclude with analysis of the precedents these prior approvals establish and what guidance they provide in the formation of a more comprehensive regulatory approach to regulating COP in EC.

1. **Pink Shell (Exhibit 11)**

Geographic Location: Pink Shell is located at the northern end of the island, near Bowditch Park, outside of the Downtown District and not within any other identified Comprehensive Plan/Land Development Code special district.

Approval Type: Pink Shell was rezoned to PUD by Lee County in 1982, pursuant to Z-82-170. COP was first approved on the subject property in 1987, pursuant to Z-87-076, which restricted service to a 350 square foot recreation room together with a contingency for future expansion of that area. In 1989, Lee County granted an Administrative Approval for COP at the Chiki Huts. A 1990 State of Florida Alcohol License, approved for Zoning by Lee County, indicates approval of COP at the Chiki Huts. In 1991, Administrative Approval Amendment Number PUD-91-010 granted an extension of the COP approval until May 11, 1995. In 1998, Lee County granted an Administrative Amendment PUD-98-029 that memorialized COP at the Chiki Huts.

In 2001, the Town rezoned the subject property to MPD (Mixed-Planned Development) through Resolution 01-26, which approved COP at the Chiki Huts seaward of the 1978 CCCL Line. The motion for approval passed 5 to 1 (Ayes-Hughes, Reynolds, Murphy and Cain; Nay-Rynearson). In 2003, Lee County approved ADD2003-0086, which again depicted the Chiki Huts being approved for COP.

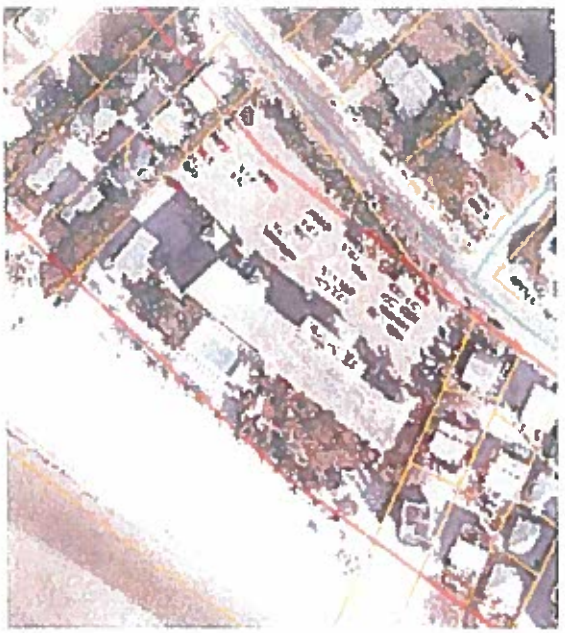
Legal Status: The 2001 rezoning (Town Resolution 01-26) of the subject property to MPD, with the Chiki Huts clearly being depicted on the Master Concept Plan (MCP) in the Recreation Future Land Use, and having historically been approved for COP indicates that COP in EC has been established as a lawful use on the Pink Shell property. Further, Resolution 01-26 set forth specific conditions on hours of service and entertainment.

Method of Dominion and Control: The CPD did not effectively establish dominion and control of the licensed premise. It appears that the objective in the CPD was to establish the point of service and made no specific reference to limiting the area of consumption.

Hours of Service: COP in conjunction with outdoor seating is allowed between the hours of 11:00AM and 10:00 PM.

Entertainment: Live outdoor music is prohibited. Recorded music is allowed between the hours of 11:00 AM and 10:00 PM.

2. **Best Western (Exhibit 12)**



Geographic Location: Best Western is located near the northern end of the island and outside of the Downtown District and not within any other identified Comprehensive Plan/Land Development Code special district.

Approval Type: COP with outdoor seating was approved by the Lee County Hearing Examiner in 1995 as a Special Permit (Case 95-08-061.02S), on a roof deck area 29' by 52'.

Legal Status: The deck area approved for COP does not extend into the EC Zoning District.

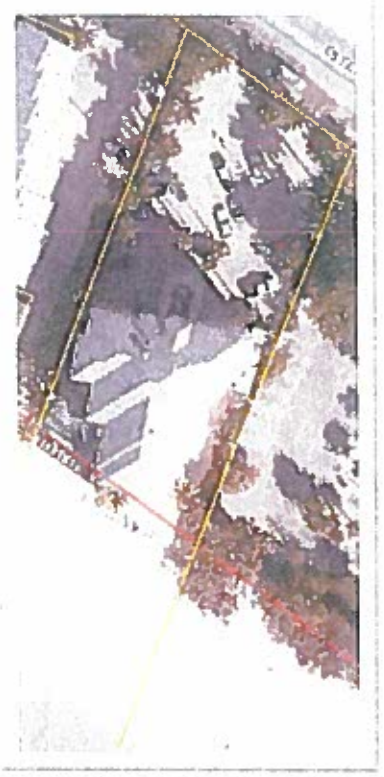
Method of Dominion and Control: COP is limited to a 29' by 52' roof deck area, with 8' masonry or block wall on the north and west sides.

Hours of Service: 10:00 AM till 10:00 PM.

Entertainment: No live music and restrictions on the type of recorded music.

3. **Edison Beach House (Exhibit 13)**

Geographic Location: Edison Beach House is located adjacent to the northern end of the Downtown Zoning District.



Approval Type: Town Council approved a Special Permit to allow COP with outdoor seating in Resolution 00-12, by a vote of 3 to 2 (Aye- Cereceda, Hughes and Murphy; Nay- Reynolds and Mulholland). The outdoor seating area is located around the pool, which extends into the Recreation Future Land Use. At the time of the approval, Town Council made a finding that this was consistent with the Comprehensive Plan and that there would be no adverse environmental impacts.

The following minutes from the Town Council meeting provide more detail on the discussion. It is worthy to note that the discussion focuses on the Point of Sale and not the area of consumption:

March 13, 2000 Town Council Meeting Minutes for:

IV. PUBLIC HEARING: FIRST CENTRAL INV., CORP., IN REFERENCE TO EDISON BEACH HOUSE. CASE #SEZ1999-0002B.

A special permit in the Commercial Planned Development (CPD) district to permit Consumption on Premises with outdoor seating per LDC 34-1265(a)(2). This property is located at 830 Estero Boulevard.

The Applicant's beginning comments were inaudible.

Applicants would like to sell liquor from the office for guests. It was established that non-guests could not purchase liquor there, as all liquor will be charged to guests' rooms.

Councilwoman Cereceda ascertained that the alcohol stocked would be beer, wine, and cocktails for two. Mr. Yax said as far as the extra items, he has talked to the 7-11 across the street about stocking some extra things they would like to see the guests have, and they expressed an interest in doing so.

Councilman Reynolds stated he didn't know if we could act on something like this unless it was written up, and he'd like to see this run by the planners and also by the LPA. In other words, he thinks we need more detail before we can act on something like that. He doesn't know how this would play, especially through Code Enforcement and Planning.

John Mulholland said that when a variance was granted by the LPA, it was quite clear to him that consumption was going to be in the guest rooms. The applicant explained that there might be a combination of liquor stocked in the office and in the guest rooms.

Councilman Reynolds advised he had visited the site and he expressed his pleasure in the architecture of the building. He felt that Code Enforcement needed to be aware of the change in plans, however, before the Council acts.

Councilwoman Cereceda felt that this was a convenience for the guests and nothing more.

County Input:

Dan Faulk of the Lee County Department of Community Development advised that the staff recommendation for this request was for denial of the consumption on premises with outdoor seating, as was the decision of the LPA. At the LPA meeting it was decided that whether alcohol is purchased from a bar by a pool or from the office it would still be considered consumption on premises. Mr. Faulk outlined the reasoning that led to the denial.

Vice Mayor Hughes stated that a major difference in the request is that liquor will not be sold to non-guests.

Anita Cereceda said that this property is going to be one of the premier properties on the Beach. She is a little concerned that currently under the permit the applicant has right now, a guest cannot take his drink out to the pool. She asked what Mr. Faulk's recommendation would be to us at this point as to how we could accommodate the request and stay with the spirit of the original approval to Mr. Yax. Mr. Faulk said it wasn't realistic to think that people are just going to sit in their rooms with their drinks and that it would be possible to approve the request with some conditions.

Councilman Reynolds said that as far as carrying drinks to the pool or anyplace else, he doesn't think we would have that control on any establishment on the island. Selling it, however, is a whole different ball game, so it is a definite change from the original request. We need to refer this back to the planners and let them react to this.

MOTION: Moved by Garr Reynolds and seconded by

that we send this request back to the planners and the LPA for

a restudy and additional information for Council.

The motion dies for lack of a second.

Mayor Mulholland advised that he thinks we have sufficient information.

Mr. Faulk stated that staff's concern was keeping alcohol on premises.

Vice Mayor Hughes said that he hadn't conceived of guests bringing their drinks to the pool because of sales in the guest rooms. What they had wanted to prohibit was a bar that was available to the public and particularly the people adjacent to Lynn Hall Park. And, incidentally, there are a number of bars that are within 500 feet of Lynn Hall Park on the other side. He felt there was no way that we are going to prohibit people from sitting around the pool having drinks. The main thing to him is that the public is not invited there.

Councilwoman Cereceda asked Attorney Roosa if the guest who brought a drink from his room and goes down to the pool with it was legally doing so. Attorney Roosa said, yes, he believes he is. So what is the difference between a person purchasing a Miller Light from room 603 and purchasing a Miller Light from the hotel office and going to the pool and drinking it? Attorney Roosa said that the original permit allowed for in-room bars, so he thinks it would require an amendment to that permit to allow the purchase of liquor in the office. As to the mechanics of what's different, he thinks testimony has been presented that there could be a larger inventory at the office than would be provided in a refrigerator, and that might have some impact. Asked if he believed that there would be

greater control as well, Mr. Roosa said yes, there would obviously be more control. There's no control to prevent teen-agers from drinking out of a refrigerator in a room with their parents, whereas if they tried to purchase it from an office, they would realize they were not eligible to do so. Ms. Cereceda asked how we would go about amending the original approval to allow for one additional location of sales. Mr. Roosa said that obviously the applicant has amended the application and so if we just approve the amended application that would accomplish that request. It is within our jurisdiction to approve it today without any further input.

Mayor Mulholland asked if the office would ask for proof before a guest could make purchases of alcohol. Mr. Roosa said the owner would violate his permit if he sold to anyone other than a guest. There would be better control if all sales were handled through the desk rather than in the room. Technically the sale is to the adult occupant of the hotel room and he is the one who would be responsible for not permitting access to a teen-ager.

Councilman Reynolds said he would just as soon have the liquor sold outside the office from a tiki hut as he would in the office. It would be more appropriate.

Public Comment:

A. Chris Lieb

Mr. Lieb said he is president of the Royal Beach Club, a family-oriented establishment, which is adjacent to the Edison Beach House. He sees no problem with selling alcohol in the office and charging it to the rooms so that the public cannot avail themselves of it.

MOTION: Moved by Ray Murphy and seconded by Dan Hughes to approve the amended request by the property owner to include the conditions that were stated prior by Attorney Roosa. Sales should be during daylight hours only.

Dan Hughes moved to amend the motion by adopting a resolution that would be approved as stated by Councilman Murphy with the conditions stated, but changing the time to from 12:00 noon until 8:00 p.m. He would also add a fourth condition that would just be a clarification of the others: That there be no bar set up or tableside service. It would strictly have to fall within the conditions set forth by Councilman Murphy.

MOTION: Moved by Dan Hughes and seconded by Ray Murphy to approve the amended request by the property owner, including the conditions stated prior by Attorney Roosa, but changing the time stated by Councilman Murphy from daylight hours to from 12:00 noon until 8:00 p.m. He would also add a fourth condition that would just be a clarification of the others: That there be no bar set up or tableside service. It would strictly have to fall within the conditions set forth by Councilman Murphy.

Discussion:

Councilwoman Cereceda asked if the motion includes that sales be only to registered guests and only be transacted by a charge to the room. She was told yes.

Attorney Roosa offered to read what he understands the motion to be. "Alcohol is to be available at the office desk, limited to guests only and charged to an occupied room between the hours of 12:00 noon and 8:00 p.m. No bar or poolside service." The amended motion was further amended to show this wording.

MOTION: Moved by Dan Hughes and seconded by Ray Murphy to amend the amended motion to read as follows: Alcohol is to be available at the office desk, limited to guests only and charged to an occupied room between the hours of 12:00 noon and 8:00 p.m. No bar or poolside service.

Discussion:

Mayor Mulholland said he saw no advantage in moving the sales from the rooms to the office.

Motion carries 3-2 with John Mulholland and Garr Reynolds dissenting.

Legal Staus: The approval for COP with outdoor seating allowed COP in EC.

Method of Dominion and Control: No specific method was established other than allowing consumption outside, but not service. There was no specific prohibition on consumption extending onto the sandy beach. Point of sale was limited to the front desk or hotel room.

Hours of Service: Noon till 8:00 PM.

Entertainment: No conditions.

4. Pierside Grill (Exhibit 14)

Geographic Location: Pierside Grill is located in the Downtown District, in Times Square, adjacent to the County Pier.

Approval Type: In 1999, Town Council approved Resolution 99-39, to allow a trellis over the existing deck that extends 74+/- seaward of the 1978 CCCL line. The motion to approve the trellis was approved by a unanimous vote (Ayes- Cerceda, Hughes, Mulholland, Reynolds and Murphy.

Legal Status: While this approval was not specific to COP, it is informative, in that based upon the Council discussion, they clearly were aware that they were memorializing the outdoor dining (and hence COP) seaward of the 1978 CCCL line. Further, the discussion by Council indicates that they acknowledged that the use was being approved in the Recreation Future Land Use.

Method of Dominion and Control: No requirements were specifically established by any Town Zoning Action.

Hours of Service: None established.

Entertainment: None established.

5. Top O' Mast (Exhibit 15)

Geographic Location: Top O' Mast is located in the Downtown District, in Times Square, adjacent to Crescent Beach Family Park.

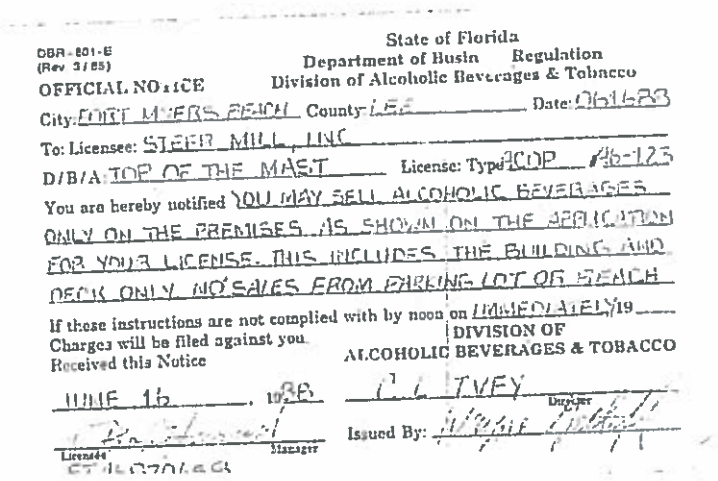
Approval Type: There is no formal zoning approval of COP for the subject property. The State of Florida Liquor License does have zoning staff approval from Lee County, dated 12-2-83. The site sketch that accompanied the 1983 license, appears to have only been approved for COP within the building. In 1988, the applicant amended the site sketch to include the deck area, but the amended sketch was not signed by Lee County staff for zoning approval. In 1988, the applicant amended the site sketch, to include what appears to be the sandy beach, but the amended sketch was not signed by Lee County staff for zoning approval. In 1988, the State of Florida Division of Alcohol, Beverages and Tobacco issued an Official Notice, which indicated "No sales from parking lot or beach."

Legal Status: Based upon the aerial and State Issued Alcohol Permit, it does not appear that COP is permitted seaward of the EC Zoning District line.

Method of Dominion and Control: Dominion and control appears to be established by the deck and railing.

Hours of Service: Not specified in the State Liquor License.

Entertainment: Not specified.



DBR-801-E
(Rev 3/85)
OFFICIAL NOTICE

State of Florida
Department of Busin Regulation
Division of Alcoholic Beverages & Tobacco

City: FORT MYERS BEACH County: LEE Date: 061683

To: Licensee: STEER MILL, INC

D/B/A: TOP OF THE MAST License: Type: COP #46-123

You are hereby notified YOU MAY SELL ALCOHOLIC BEVERAGES ONLY ON THE PREMISES AS SHOWN ON THE APPLICATION FOR YOUR LICENSE. THIS INCLUDES THE BUILDING AND DECK ONLY. NO SALES FROM PARKING LOT OR BEACH

If these instructions are not complied with by noon on IMMEDIATELY 19

Charges will be filed against you.

Received this Notice

JUNE 16, 1988

License

Manager

DIVISION OF
ALCOHOLIC BEVERAGES & TOBACCO

Director

Issued By:

1988 ABT Official Notice

Steer-Mills Inc. dba/Top of the Mast July 16, 2012
Re; Right to sell and serve COP on the Beach

HISTORY
1974 4-COP license Audit # 25106 was purchased with Spinnaker Restaurant and Lounge initially approved and issued in early 1970's, with County zoning approval by the Zoning Director under the 1962 Zoning regulations, as a "Transfer" with all the rights initially approved which at that time had no restrictions, boundaries, sketches or Special Exceptions was adopted in 1980, it was common for Beach front, bay front and Marina businesses with Alcohol beverage licenses, to sell and serve Alcohol on the Beach, Bay or Marina Dock as a normal and accepted extension of their business from their buildings.

Initially sketches with the application were requested to show the dimensions to calculate the seating capacity of the business, to verify that the 150 occupant license threshold was met as required by the DABT regulations and in addition the County used the occupant number to calculate Parking spaces.

The use of the sketch evolved from occupant load calculations and parking in the 1986 when the Zoning was amended to require a new Special Exception filed for any "Expansion of Alcoholic Use" such as Deck, Sidewalk and in a few cases Beach, the sketches from hereon was more specifically used by the County to define the area "Licensed for Alcohol use" not only the Special Exception request Deck, Sidewalk and Beach, now the interior of the Building. It should be noted it was not until 2012 DABT expressed their acceptance of using the sketches, now for enforcement.

Thereafter the 1986 Special Exceptions not only defined the licensed area, it also limited and restricted the Alcohol time of use, entertainment and noise limitations.

It should also be noted that the County and State "Purged" their files up to 1984, past history for past approvals are difficult or impossible to recover, made more difficult by the County transferring their Jurisdictional authority for Alcohol licensing to the Town of Fort Myers Beach who has NO history or understanding of the Counties regulations as they evolved over the years.

Another concern with the Towns jurisdiction is their lack of understanding of "Legally non-conforming" and "Grandfather" rights, the Town staff believes they can arbitrarily alter ones zoning with newer amended ordinances and ignore the initial grants that stay with the property as a private property and Administrative right, not to be divested or reduced from its current level of zoning as initially granted.

TOWN ENFORCEMENT ACTION
Beach use eventually became a topic of control in the mid 1980's with the County started to restrict the Alcohol use to the SE sketch and/or approved expansions, where the DABT staff was still advising my clients around 2010 they "did not have any regulations

prohibiting use on the beach" and several times I would have to advise my clients, that County zoning, specifically the limitations in the Special Exceptions ruled as to area of use, regardless of DABT's position and comments.

Early this year, Top of the Mast Beach use issue started when the Town of FMB Director researched Beach COP history and failing to find or understand the history and evolution of the Counties COP regulations, transfers, and practices, contacted DABT twice to request they void Top of the Mast COP license because he failed to find any County approval of record.

DABT reviewed the file (That was purged up to 1984) that still had in the file (2) applications remaining and (1) letter from the Spinnaker file dated approx. 1966+-. Staffs position as advised, was to use the most current sketch on file, because their application required a sketch attached and they have used the sketch to define the area licensed (This staff member has been with ABT 16 years), and they would enforce that sketch. The current sketch of their record, was a sketch submitted by the owner to define the area of Ropes and Post later to be removed under citation of Beaches and Shores, in lieu of using portable buckets post and signs.
DABT specifically was advised that the sketch they intended to use for enforcement was submitted by the owner and not County approved nor attached to any COP application, therefore DABT specific selective use of a 19' dimension found on that 1987 sketch was in fact limiting and reducing the initial zoning the County approved and therefore violated the owner rights, as a past Administrative Code Enforcement Director for the County specifically directed to review COP applications for approval and enforce those regulations, advised DABT staff who responded she only had my word and she was going to use the sketch regardless.
Her action resulted in the arrest of the owner who stated he had the right to sell and serve to the MHT Gulf of Mexico as recorded on his deed and as he has for over 38 years, she enforced the 19' dimension from his deck on the beach, from the 1987 invalid sketch that did not have any zoning approval or COP significance relative to the States COP license.

CURRENT FILE OF RECORD (AS PURGED PRIOR TO 1984)
The DABT file contained (3) sketches;
No sketch of record of Spinnaker Restaurant and Lounge, (file purged)
No 1974 application of Steer Mills, Inc. dba/ Top of the Mast. (file purged)
1984 application for 4COP with package store sales (Lottery license) "Transferred" from Galaxy Lounge and Bar, with a 1974 sketch attached, (assumed pulled from the 1974 application and attached to this application.

**1986 Inspection for compliance with affidavit acknowledging;
DABT can inspect without a search warrant
Any additions or alterations shall be inspected
** The foregoing sketch attached will become part of application for a license

**** DEFENSE OF AFFIDAVIT**
Special Note; This inspection was called for and initiated to have the owner SIGN an affidavit with the above (3) conditions, most important was "I further understand that the above and foregoing sketch will become, and hereby agree that it is, a part of my application for a license", County intentionally wanted to establish a record in the file that would parallel other applications that required a sketch and use that for enforcement.

** Note; key word above and "foregoing sketch" definition is "Preceding" (go or come before). would eliminate the use of the 1987 sketch.

** Also Note; the1986 sketch shows the entire site with no dimension to the waters edge as allowed by deed.

** In any event, the owner would not submit or accept future interpretations of the sketch to "reduce or limit or restrict" the initial area granted from the 1970's.

Note; It should be stated that DABT has in the past and now finally evolved into the arrest of the owner as to the disputed area licensed to sell and serve, DABT staff has filed citations and interpreted use of the sketch to limit the area as the County had adopted that procedure since 1986, both however could not and should not use the sketch to limit, reduce or alter the initial area granted and as the owner has, for over 38 years, used the entire site as a beach front property and an extension of his upland business.

ADDITIONAL FILE
1987 Sketch showing "Post and Ropes" along the waters edge, and dimensioned 19' to the then location of the Waters edge, MHT was submitted and accepted in the DABT file to define the beach area as initially approved in the 1970's.

Note; this 1987 sketch had nothing to do with the COP applications it was initiated to define the area with Ropes and Post to challenge an inspectors interpretation to limit the licensed area to the building and deck, and not parking lot or beach. (This sketch was not from or approved by zoning is being used for DABT enforcement)

Also note; this submission of any and all sketch's were to placate more current application requirements and would have been requested by County staff, and in this case for information only, not submitted to "reduce, limit or restrict" the initial area of use, including the beach as initially granted.

DABT ENFORCEMENT
DABT staffs current position has acknowledged their acceptance of Top of the Mast right to "sell and serve" on the beach, however per the 1987 sketch of record, limited that use to 19' from the deck and not to the MHT as the deed of record and 1970's zoning approval allowed.

It is my opinion as a prior Administrative Director of Code Enforcement and Building Official of Lee County with the expressed directive from the County Commission to review and approved applications for COP during the period of 1978 to 1981, with full and complete understanding of Lee County zoning, land use, regulations and building codes, the history of COP ordinance, regulations and practices and its evolution of interpreted use and administering, Steer-Mills Inc. dba/Top of the Mast was granted the same rights of Spinnaker Restaurant and Lounge from the 1970 era when approved and licensed for COP and when there were no prohibited use to "sell and serve" on the beach, as there are none today with County, Town and DABT and any request to complete the County or DABT file with a sketch for what ever reason, in no way divested the owners vested rights therein initially granted and it is my expressed opinion that those rights extend to the MHT and if the beach is extended by fill as regulated by Beaches and Shores DEPS, FS 161 allows that owner the right to extend his upland rights to the new MHT as a Riparian right and Statutes of record.

IN CONCLUSION

The only argument is with DABT Code enforcing the 1987 sketch 19' dimension in lieu of using and allowing the use to extend to the deeded right to the MHT.

The 1987 sketch was to designate beach boundaries with Post and Ropes for "selling and serving" alcohol as initially granted and licensed 1970's as transferred from Spinnaker Restaurant and Lounge and was not connected to Lee County zoning.

We therefore request DABT to honor and acknowledge the deeded rights to the MHT as was granted, licensed and transferred and as evidenced permitted use for over 38 years or honor the 1986 affidavit and sketch attached that represents the entire site as a representation of the initial rights of the owner, then applying the States survey of 2000 and deed of record to the MHT, including any Riparian rights thereto per FS 161 for any beach fill that extends the MHT.

Richard M. McDole CABO, CPCA

such additional sheets need be presented to the filing officer with the first three copies of the financing statement [illegible] may be on any size paper that is convenient for the secured party. Indicate the number of additional sheets attached [illegible]

4. If collateral is crops or goods which are or are to become fixtures, give the legal description of the real estate and name of record [illegible]
5. When a copy of the security agreement is used as a financing statement, it is requested that it be accompanied by a completed [illegible] forms. An additional fee of $3.00 is required.
6. Please sign this form with a ball point pen. Signatures must be legible on alphabetical and numerical copies.
7. If filing with Clerk of Circuit Court consult Chapter 28, F. S., or local clerk for proper fees.

THIS FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code

837471

3. Maturity date of any.

For Filing Officer Date, Time, Number and Filing Office

OFF REC 1069 PG 784

RECORDED IN OFFICIAL RECORDS LEE COUNTY, FLORIDA RECORD VERIFIED

JAN 7 3 91 PM '79

CLERK OF CIRCUIT COURT

1. Debtor(s) (Last Name First) and address(es)

Steer-Mill, Inc.
1028 Estero Boulevard
Ft.Myers Beach,Fla. 33931

2. Secured Party(ies) and address(es)

Stanford S. Daw & Betty W. Daw
1870 Newark Road
Zanesville, Ohio 43701

4. This financing statement covers the following types (or items) of property:

All furniture, equipment, fixtures, equipment and inventory, trade name, State of Fla. Beverage Licenses 4-COP, Audit No. 25106, and all other licenses located at the Spinnaker Restaurant and Lounge, 1028 Estero Boulevard, Ft. Myers Beach, Lee County, Fla.

5. Assignee(s) of Secured Party and Address(es)

6. The secured party(s) whose signature(s) appears below, states that the terms required by Chapter 201, Florida Statutes, if any, have been placed on the preliminary statements secured hereby, and will be placed on any additional and similar statements that may be so secured.

This statement is filed without the debtor's signature to perfect a security interest in collateral. Check ☒ if so:
☐ Already subject to a security interest in another jurisdiction when it was brought into this state.
☐ which is proceeds of the original collateral described above in which a security interest was perfected.

RECORD VERIFIED SAM [illegible] CLERK
BY J. THOMPSON D.C.

Check ☒ if covered: ☐ Proceeds of Collateral are also covered. ☐ Products of Collateral are also covered. No. of additional Sheets presented

Filed with:

STEER-MILL, INC., a Fla. corporation

[signature] [signature]

By: [signature] By: [signature]

Signature(s) of Debtor(s) Signature(s) of Secured Party(ies)

STANDARD FORM — FORM UCC-1

(1) Filing Officer Copy — Alphabetical

Approved by Richard (Dick) Stone, Secretary of State, State of Florida

675.00 at
247.50 and
6.00 [illegible]

Made this 14th *day of* November *A. D. 19 74*

Between STANFORD S. DAW and BETTY W. DAW, husband and wife,

of the County of Muskingum *in the State of* Ohio
party of the first part, and STEER-MILL, INC., a Florida corporation,
whose address is: 1028 Estero Boulevard, Fort Myers Beach

of the County of Lee *in the State of* Florida 33931
party of the second part,

Witnesseth *that the said party of the first part, for and in consideration of the sum of* Ten Dollars and other valuable considerations ~~Dollars~~ *to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part his heirs and assigns forever, the following described land, situate lying and being in the County of* Lee *, State of Florida, to wit:*

AS DESCRIBED ON ATTACHED EXHIBIT "A"

DOCUMENTARY SUR TAX FLORIDA DEC 1 '74 247.50

STATE OF FLORIDA DOCUMENTARY STAMP TAX DEPT. OF REVENUE DEC 1 '74 675.00

SUBJECT TO easements, restrictions and reservations of record and taxes for the year 1974.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, *the said party of the first part has hereunto set his hand and seal the day and year first above written.*

Signed, Sealed and Delivered in Our Presence:

Jno S Mill — Stanford S. Daw
Stanford S. Daw

Elizabeth Williams — Betty W. Daw
Betty W. Daw

State of Florida OHIO
County of Muskingum

I Hereby Certify *That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments,* STANFORD S. DAW and BETTY W. DAW, husband and wife,

to me well known and known to me to be the individuals described in and who executed the foregoing deed, and they *acknowledged before me that* they *executed the same freely and voluntarily for the purposes therein expressed.*

Witness my hand and official seal at Zanesville *State of Florida, this* 21st

THIS INSTRUMENT PREPARED BY WILLIAM L. STEWART
STEWART, STEWART & JACKSON
POST OFFICE BOX 505, FORT MYERS, FLORIDA

RECORD VERIFIED—SAL GERACI CLERK
BY H. FERNSTROM D.C.

FORM 700-1
Rev. 10-80

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO
APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE

APV

INSTRUCTIONS:

1. This application must be typed and filed in duplicate. As part of our service the Division of Alcoholic Beverages and Tobacco will be happy to assist in the preparation and typing of this application.

2. All questions must be answered. If a question does not apply so indicate by N/A.

3. This application is taken under oath. Persons filing false applications or information may be prosecuted and their application denied.

I TYPE OF APPLICATION
Check Appropriate Box(es) 59-1554026

( ) New
( ) New - Additional
( ) One Day Permit (For _____)
( ) Temporary Transfer
(xx) Transfer
(xx) Change of Business Name
(xx) Change of Location

( ) Increase in Series
( ) Decrease in Series
( ) Change in Series
( ) Change of Officers
( ) Correction _____
( ) Other _____

2-15-84

II FOR ANY TRANSFER OR CHANGE APPLICATION ONLY:

1. For Transfer of License No. 56-125 Current Series 4 COP
2. From Wallace G. Feather
3. Business Name Galaxy Lounge & Half Moon Liquors

III FOR ALL APPLICATIONS

1. Full Name of Applicant(s) Steam Hill Inc.
2. Business Name Top of the Mast
3. Location of Business 1028 Estero Blvd. / Ft. Myers Beach / Lee / 33931
   STREET NO. / MUNICIPALITY / COUNTY / ZIPCODE
4. Mailing Address same
   (IF DIFFERENT FROM LOCATION OF BUSINESS) ZIPCODE
5. Type of License Desired (Series 4 COP)*
6. If applicant is a corporation or a limited partnership list the charter number issued by the Florida Department of State 4-62485 AL
7. List below the names of all those connected, directly or indirectly, in the business for which the license is sought: (This includes Partner(s), Spouse, Director(s), Stockholder(s), Chief Executive, Limited and General Partner(s), Corporation(s), or any form of entity which is connected with this business).

NAME	OFFICE (IF CORPORATION) OR OTHER TITLE IF ANY	NATURE OF INTEREST INCLUDING STOCK %
A. Steven Strauss	Pres/Sec/Treas	100%
B.		
C.		
D.		
E.		
F.		
G.		
H.		

8. The following questions must be answered for those persons or business entities listed above who are directly or indirectly interested in the business for which the license is sought:

   A. Are any of the above named persons or entities:
   1) Employees of the Division of Alcoholic Beverages and Tobacco? no
   2) Law enforcement officials with arrest powers granted by the Legislature? no
   3) Under sentence or parole? no
   4) Convicted in the last past 15 years of any felony in this State or any other State or by the United States? no
   5) Convicted in the last past 5 years of any beverage law violation in this State or any other State or by the United States? no

* A schedule of license fees is available upon request.

D. Are any of the persons or business entities now, or have they been in the past, interested in, affiliated or connected with, directly or indirectly, including through stock ownership or otherwise, any corporation, partnership or individual engaged in, directly or indirectly, the manufacturing, rectifying, distilling, distributing, importing, exporting, or selling at retail, any alcoholic beverage in the State of Florida or any other State? yes

If the answer is "Yes" to any of the questions asked give full particulars

46-146 4 COP SRX

IV SALES TAX

1. Do you acknowledge your statutory responsibility to obtain a proper sales tax account number before operating a business under the license you are hereby seeking? yes Initials: _____

V RIGHT OF OCCUPANCY

1. Does applicant have a legal right of occupancy to the premises sought to be licensed? yes Explain (include the landlords name and address if applicable) _____

VI HEALTH APPROVAL - TO BE COMPLETED BY THE STATE/COUNTY HEALTH AUTHORITIES ONLY:

Inspection of this establishment was made on 10-20-83, and it was found that the sanitary facilities of the establishment

(X) Comply
( ) Do Not Comply

with the minimum requirements under regulations of the Florida State Sanitary Code, as promulgated under Chapter 19366, General Laws of Florida.

Joe Raven Lee County Health Dept

Sanitarian County Health Department

VII ZONING APPROVAL

1. Is location within the limits of an incorporated municipality? _____
2. This premises is applying for a 4 COP type license. This would authorize sales of alcoholic beverages as follows: beer, wine and liquor for consumption on the premises with package sales
3. THIS PORTION IS TO BE COMPLETED BY THE LOCAL ZONING AUTHORITIES ONLY:

✓ The above location does comply with local zoning ordinance for the sale of alcoholic beverages as stated above.

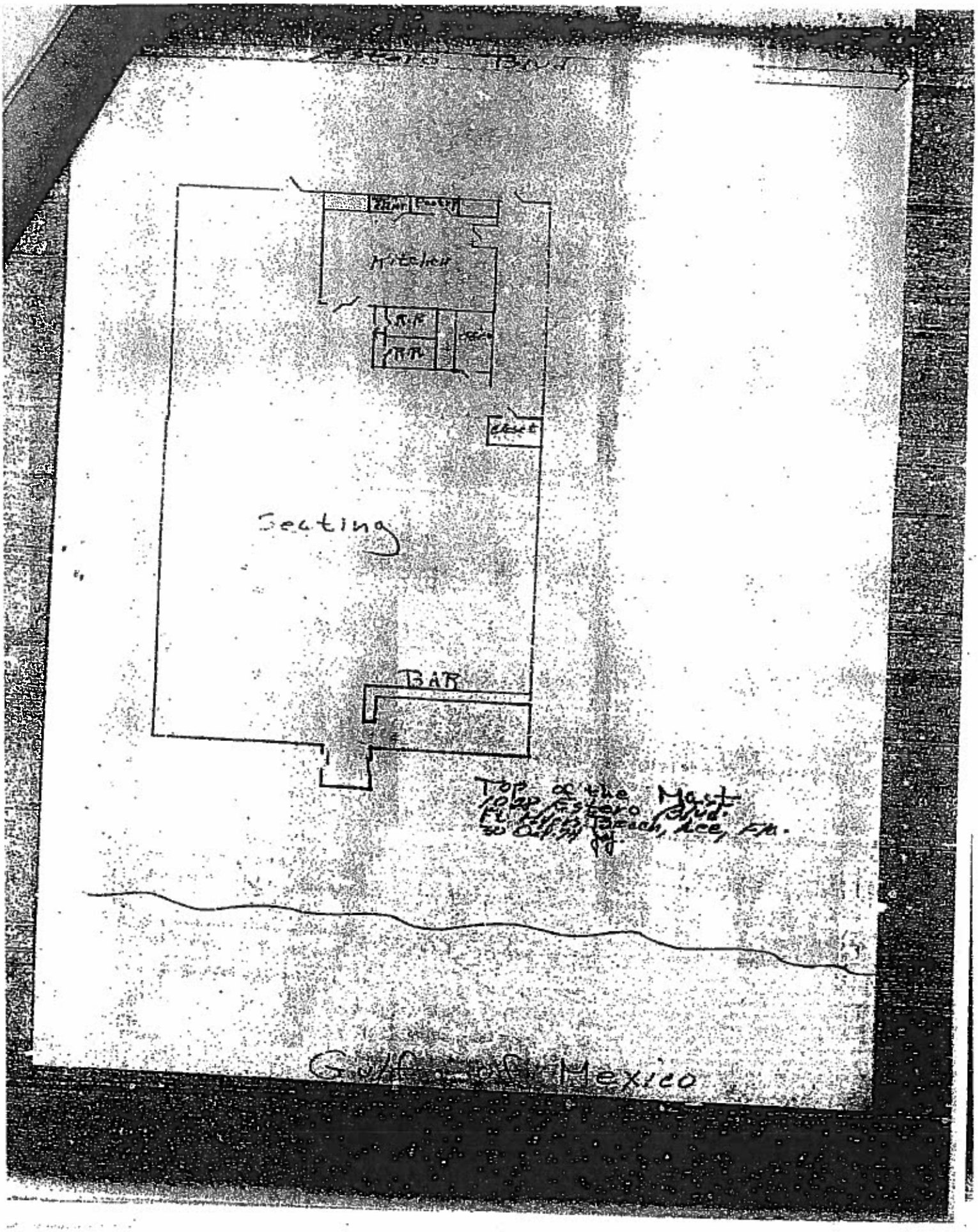
_____ The above location does not comply with local zoning ordinance for the sale of alcoholic beverages as stated above.

Signed: Pamela S. Hand Title: Director of Zoning Dept.

City Fort Myers County Lee Date 12-5-83

VIII FOR ALL APPLICANTS FOR SPECIAL OR CLUB ALCOHOLIC BEVERAGE LICENSES.

1. As an applicant for a _____ license pursuant to _____ it is recognized that the following requirements must be met and maintained:


Kitchen
Seating
BAR
Gulf of Mexico

ORIGINAL

DBR-723-L

DEPARTMENT OF BUSINESS REGULATION
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
ALCOHOLIC BEVERAGE LICENSE FOR THE PERIOD
APRIL 1, 1983 THRU MARCH 31, 1984

CITY NAME

LICENSE/PERMIT NO. 46-00123

SERIES 4COP

FEE $2183.72

15392
AUDIT NUMBER

114502

ISSUED TO:
TOP OF THE MAST
STEER MILL INC
TRANSFER-MISCELLANEOUS CHANGE(S)

LOCATION:
1028 ESTERO BLVD
FT MYERS BEACH

THIS LICENSE/PERMIT AUTHORIZES THE HOLDER TO CONDUCT THE DEFINED BUSINESS AT THE LOCATION IMPRINTED HEREON PURSUANT TO APPLICABLE LAWS AND ADMINISTRATIVE RULES OF THE STATE OF FLORIDA.

STEER MILL INC
1028 ESTERO BLVD
FT MYERS BEACH FL 33931

READ INSTRUCTIONS ON REVERSE SIDE
02/27/84 $2183.72 PAID

C009164

MAILING ADDRESS: LEE COUNTY

ISSUED PURSUANT TO LAW BY
DIRECTOR, DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

THIS FORM BECOMES A RECEIPT ONLY WHEN VALIDATED BY THE DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

Strauss

APPLICATION TRANSMITTAL

ATR

Business Name: Top O' Mast Restaurant & Lounge

Applicant: Steer Mill Inc.

Location Address: 1028 Estero Blvd. Fort Myers Beach Lee
Street Number Municipality County

License Number: 46-125 SERIES: 4-COP

Date RECEIVED by District: 1/8/86

Date ASSIGNED to Investigator: 1/9/86

APPLICANT INFORMATION:

APPLICANTS NAME	CURRENT LICENSEE	DATE FINGERPRINTED	DISQUALIFYING RECORD
Steven Strauss	O/F 46-125		

Date COMPLETED by Investigator: 1/21/86

RECOMMENDATION: (X) APPROVAL ( ) DISAPPROVAL

INVESTIGATOR'S SIGNATURE: L Dougherty

COMMENTS:

Date REVIEWED by Supervisor: 1-23-86

RECOMMENDATION: (X) APPROVAL ( ) DISAPPROVAL

SUPERVISOR'S SIGNATURE: [illegible]

COMMENTS:

CENTRAL OFFICE
(DATE RECEIVED)

RECEIVED
1986
DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO
TALLAHASSEE, FLORIDA

DATE INDEXED:

DATE COMPLETED: 1-27-86

FINAL DECISION: (X) Approval ( ) Disapproval

SIGNATURE: [illegible]

DATE MICROFILMED:

COMMENTS:

Rev. 6-77

APPLICATION TRANSMITTAL

Date Received in Central Office

District No. _____

TRANSFER [illegible]
(Type of Application)

4-COP (Series) 46-123 (Number)

Top of the Mast
(Business Name)

Steer Mill Inc. [illegible]
(Applicant)

1028 Estero Blvd.
(Location)

Ft. Myers Beach (City) Lee (County)

RECEIVED

DRN. [illegible]
TALLAHASSEE, [illegible]

1 Approval
2 Disapproval

ENCLOSED PLEASE FIND PROCESSED LICENSE APPLICATION FOR YOUR CONSIDERATION, ACCOMPANIED BY INFORMATION CHECKED BELOW:

LICENSE APPLICATION INVESTIGATION XX	HEALTH APPROVAL XX	ARTICLES OF INC.
PERSONAL QUESTIONAIRE	ZONING APPROVAL XX	CLUB BY-LAWS
FINGERPRINT 3 x 5 CARD W/ANY RECORD & TWO DBR 735-L's	RIGHT OF OCCUPANCY XX	SPECIAL LICENSE AFFIDAVITS
SALES TAX CERT. XX	MINUTES	OTHER DOCUMENTS XX
	CERT. OF INC. XX	APPLICATION FORM XX

DISTRICT SUPERVISOR

SIGNATURE	RECOMMENDATION 1	2
[signature] for	X	

T. L. Stout, Lt. 1-27-84

COMMENTS:

RECORDS			LIST NAMES OF INDIVIDUALS TO BE INDEXED
INDEXED [illegible]			Steven Strauss, Pres./Sec./Treas.
[illegible] 2-13-84	X		

Series License Number

Steer Mill, Incorporated
Owner Name

1028 Estero Boulevard — Fort Myers Beach — Lee
Location Address — City — County

SEE ATTACHED

"I hereby swear or affirm that the above and foregoing or attached sketch or blueprint is a true and correct representation of the licensed premises, and agree that the place of business so licensed may be inspected and searched during business hours or any time business is being conducted on the premises without a search warrant by officers of the Division of Alcoholic Beverages and Tobacco, the Sheriff, his deputies, and police officers for purposes of determining compliance with the beverage laws.

"I further agree that in the event said premises are altered or any additions are made thereto, such alterations or added portions to the said licensed premises may be inspected in the same manner and by the same officers as is agreed to in the case of the original premises that may be licensed.

"I further understand that the above and foregoing sketch will become, and hereby agree that it is, a part of my application for a license."

STATE OF FLORIDA

COUNTY OF Lee

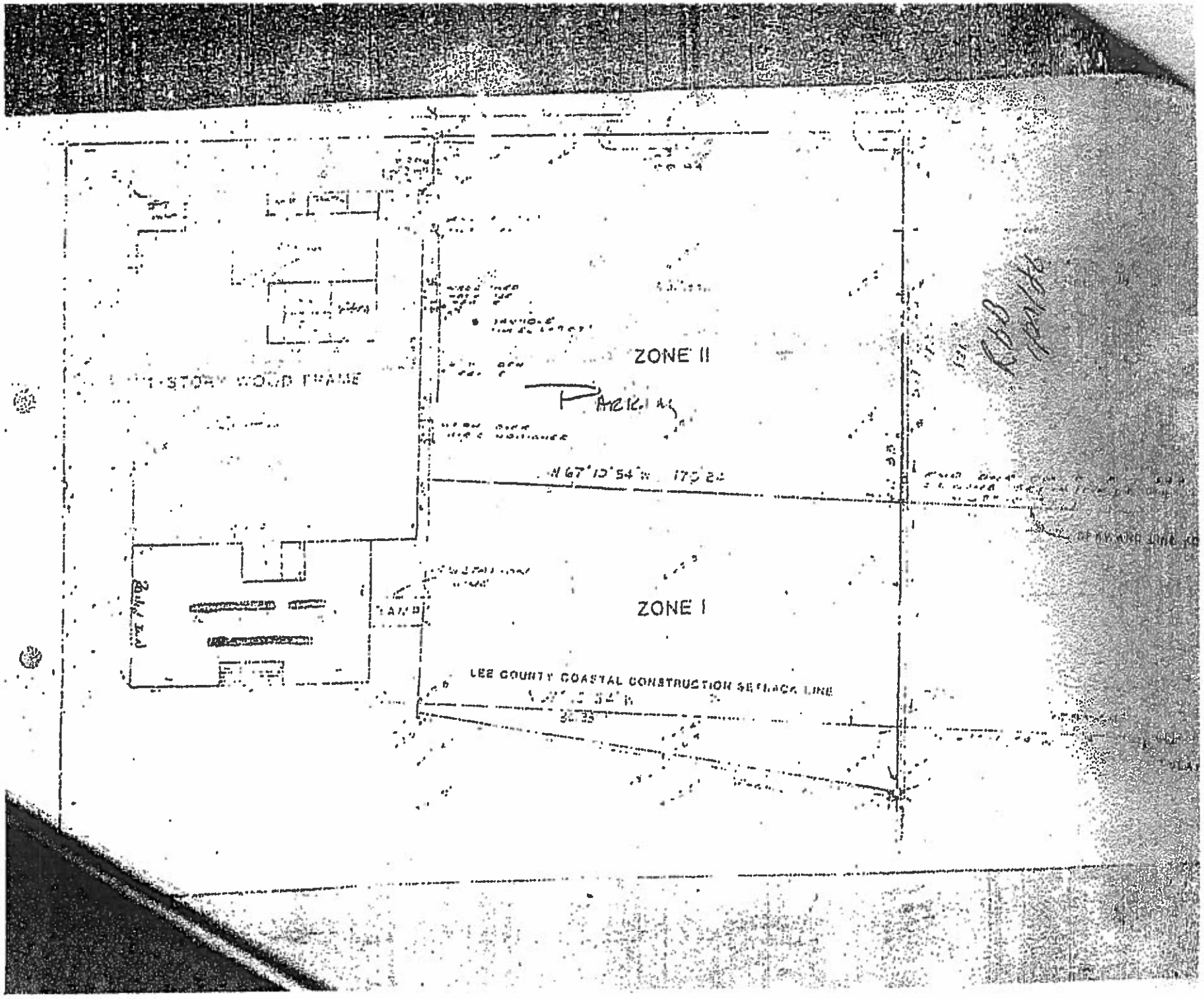
Authorized Signature
Steven Strauss, President

Sworn to and subscribed to before me this 7th day of January

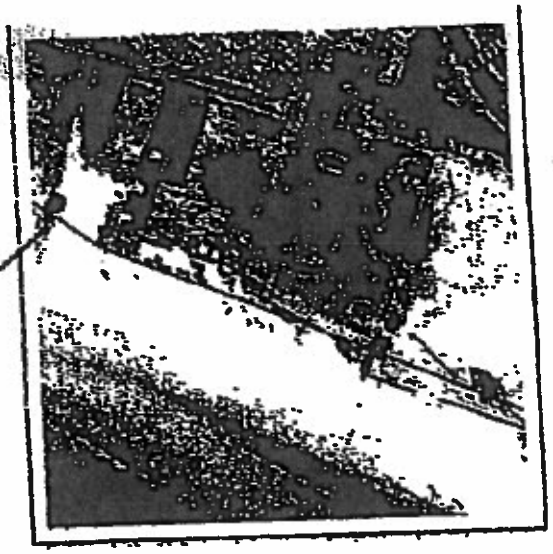
NOTARY PUBLIC

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA

RECEIVED
DEPT. OF BUSINESS REGULATION
JAN 08 1986
DIVISION OF BEVERAGE
Fort Myers, Florida


ZONE II
PARKING
ZONE I
LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE

Top O' Mast (Exhibit 15)



Geographic Location: Top O' Mast is located in the Downtown District, in Times Square, adjacent to Crescent Beach Family Park.

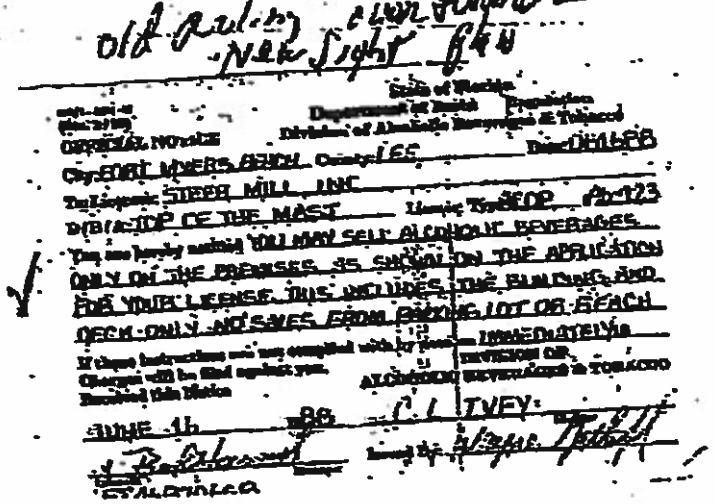
Approval Type: There is no formal zoning approval of COP for the subject property. The State of Florida Liquor License does have zoning staff approval from Lee County, dated 12-2-83. The site sketch that accompanied the 1983 license, appears to have only been approved for COP within the building. In 1988, the applicant amended the site sketch to include the deck area, but the amended sketch was not signed by Lee County staff for zoning approval. In 1988, the applicant amended the site sketch, to include what appears to be the sandy beach, but the amended sketch was not signed by Lee County staff for zoning approval. In 1988, the State of Florida Division of Alcohol, Beverages and Tobacco issued an Official Notice, which indicated "No sales from parking lot or beach."

Legal Status: Based upon the aerial and State Issued Alcohol Permit, it does not appear that COP is permitted seaward of the EC Zoning District line.

Method of Dominion and Control: Dominion and control appears to be established by the deck and railing.

Hours of Service: Not specified in the State Liquor License.

Entertainment: Not specified.



State of Florida
Department of Business Regulation
Division of Alcoholic Beverages & Tobacco

OFFICIAL NOTICE

City: FORT MYERS BEACH County: LEE Date: 06/16/88

To: Licensee: STEER MILL, INC

D/B/A: TOP OF THE MAST License Type: SCOP Pb-123

You are hereby notified YOU MAY SELL ALCOHOLIC BEVERAGES ONLY ON THE PREMISES AS SHOWN ON THE APPLICATION FOR YOUR LICENSE. THIS INCLUDES THE BUILDING AND DECK ONLY. NO SALES FROM PARKING LOT OR BEACH

If these instructions are not complied with by [illegible] IMMEDIATELY [illegible] Charges will be filed against you.

Received this Notice

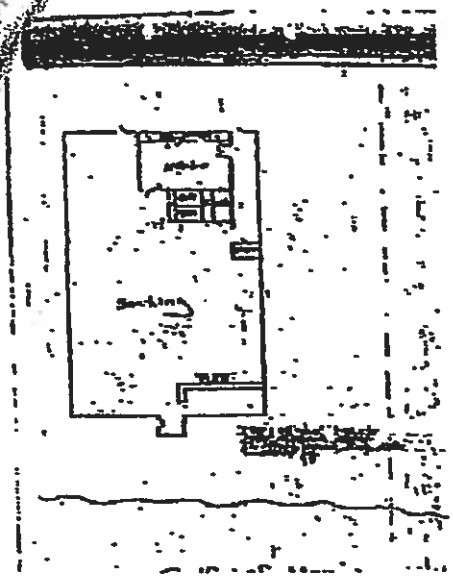
JUNE 16 88

DIVISION OF ALCOHOLIC BEVERAGES & TOBACCO

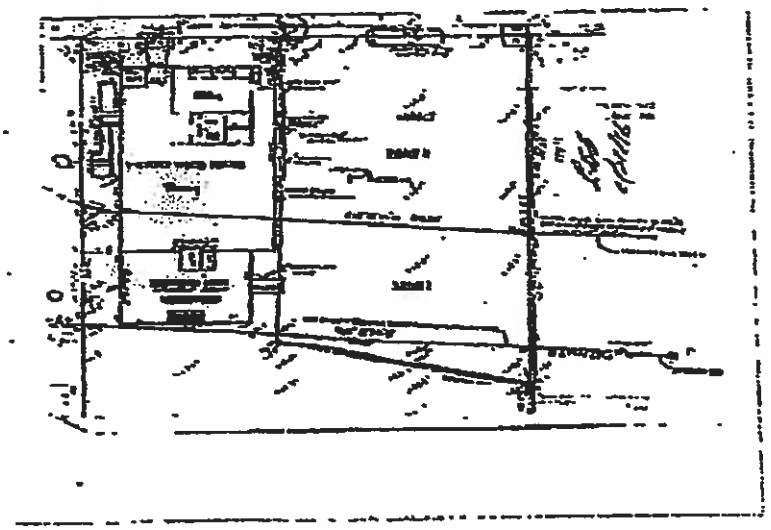
C. L. IVEY

Issued by: [illegible]

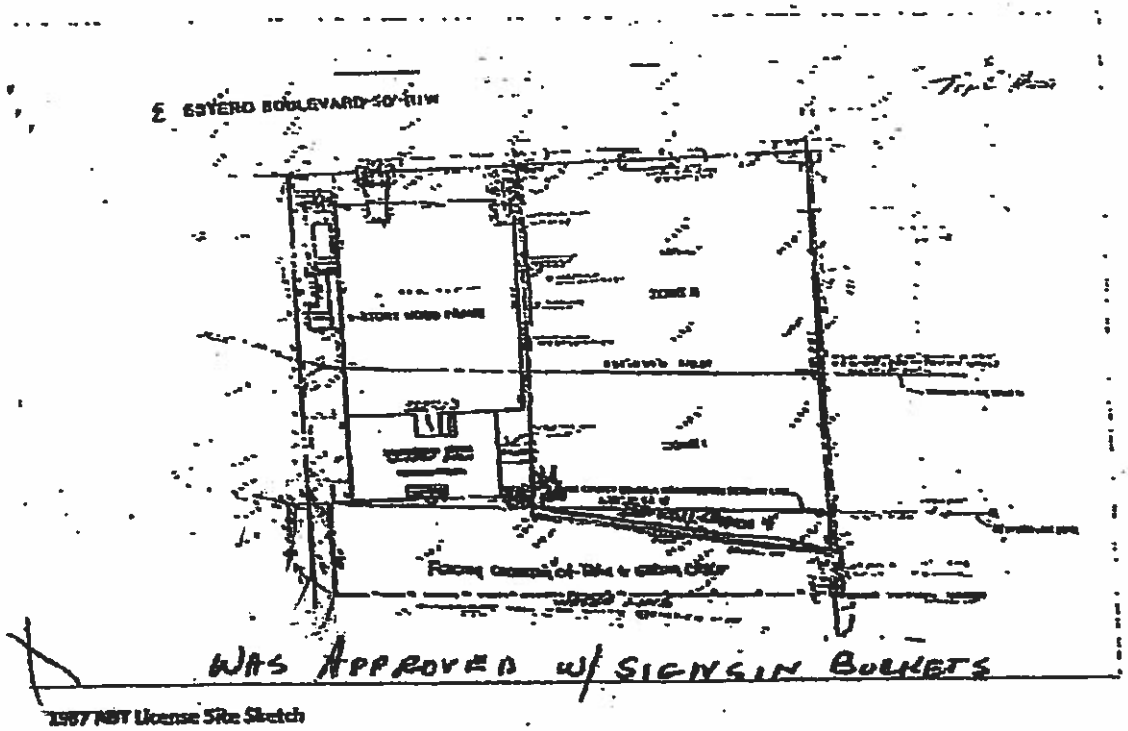
1988 ABT Official Notice



1983 ABT License Site Sketch



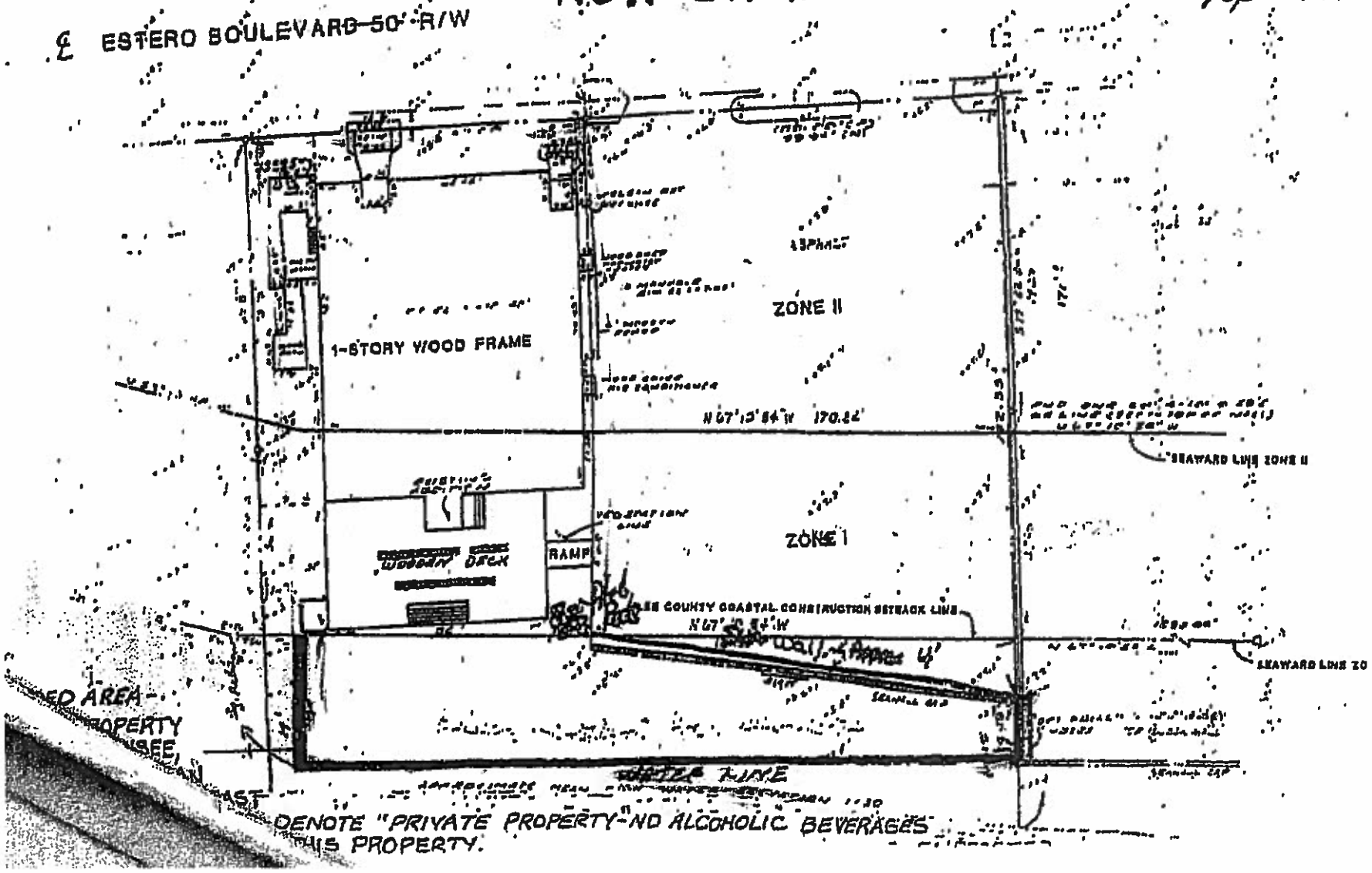
1986 ABT License Site Sketch



1987 ABT License Site Sketch

NEW SKETCH 090388

Top O' Mast



DEPARTMENT OF NATURAL RESOURCES

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

GARDNER
Executive Director

Secretary of State
BOB BUTTERWORTH
Attorney General
GERALD LEWIS
State Comptroller
BILL GUNTER
State Treasurer
DOYLE CONNER
Commissioner of Agriculture
BETTY CASTOR
Commissioner of Education

February 27, 1989

PLEASE ADDRESS REPLY TO:

Mr. William E. Whitlock, III
Donald L. Tucker, P.A.
Post Office Drawer 38580
Tallahassee, Florida 32315

RE: VLE 89-01

Dear Mr. Whitlock:

Thank you for your letter dated February 9, 1989.

In your letter you stated that Top-O-Mast Restaurant has agreed to remove the illegally constructed post and rope barrier structure from the area seaward of the coastal construction control line. You also stated that Top-O-Mast Restaurant would utilize a movable post with attached signage outlining the premises of Top-O-Mast, without connecting chain or rope, and that such posts would be employed only during the hours of operation. Such action is acceptable to the department.

Please notify the department when the post and rope barrier structure has been removed from the area seaward of the coastal construction control line. If removal is completed to the satisfaction of the Department of Natural Resources, the file on the violation will be closed without further proceedings.

If you have any questions regarding this letter, or the violation involved, please contact G. L. Bill at 904/487-2203 or at the letterhead address.

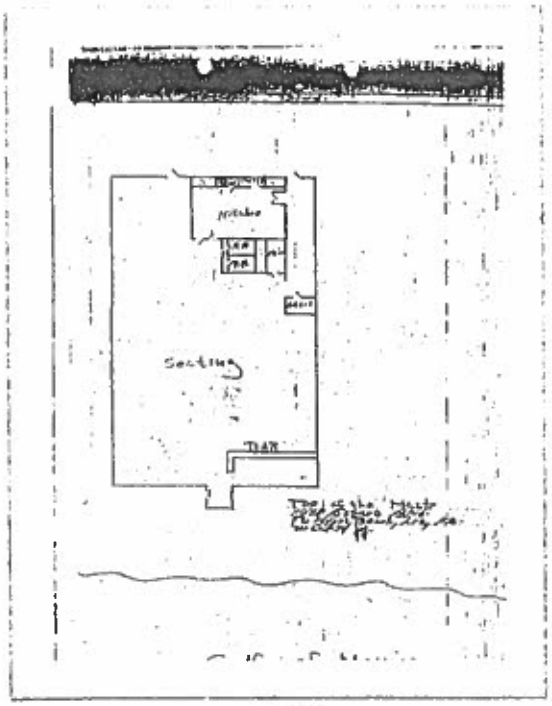
Your cooperation is appreciated.

Sincerely,

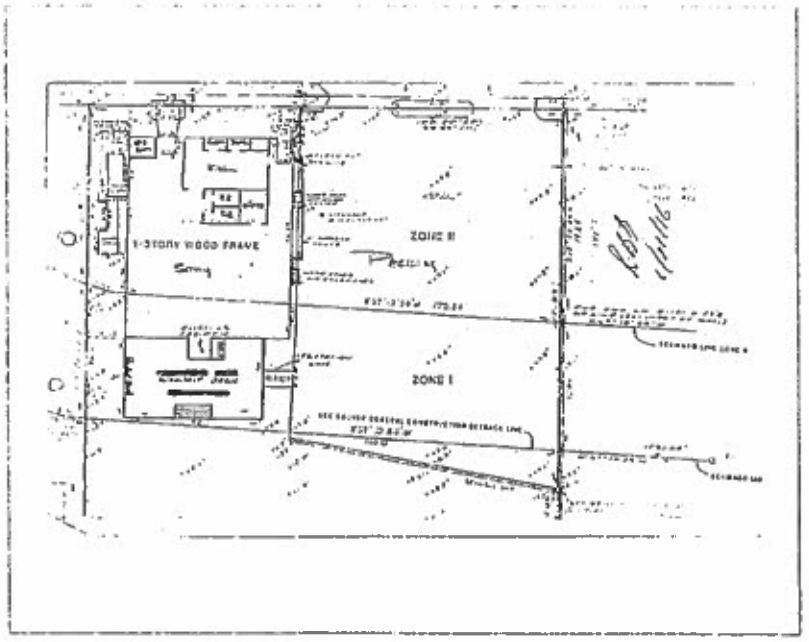
for Kirby B. Green, III
Division Director
Division of Beaches and Shores

KBG/jmw
CERTIFIED #733 887 091
cc: G. L. Bill
Tony McNeal
Mike Joity
Tommy L. Ewing
Top-O-Mast, Steve Strauss
Lee County Building Department

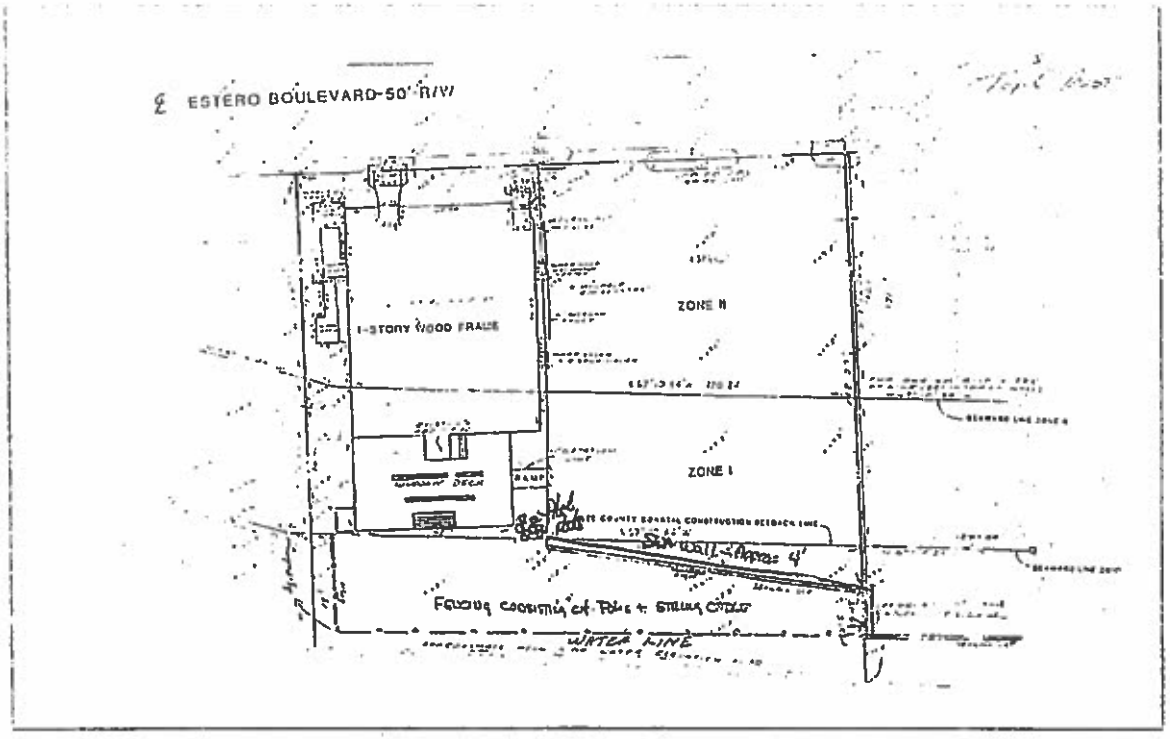
LEGEND
PROFILE MONUMENT
MARCH 2010 4.1' NGVD CONTOUR LINE
STAGING AREA
34+00.0 BASELINE STATION
CONSTRUCTION ACCESS
PROFILE LINES
NOTES:
1. COORDINATES SHOWN HEREON ARE BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM WEST ZONE NAD 1983.
2. DATE OF AERIAL PHOTOGRAPHY-FEBRUARY 2009.
3. LANDWARD LIMIT OF FILL IS THE 4.1' NGVD CONTOUR (AS SURVEYED IN MARCH 2010), THE SEAWARD EDGE OF VEGETATION, OR STRUCTURE (SEAWALL, DECK, ETC...). DO NOT BURY VEGETATION OR DECKS.
4. FILL ALL DEPRESSIONS AND SWALES LOCATED SEAWARD OF EXISTING DUNE.
5. CONSTRUCTION AZIMUTH WILL BE PERPENDICULAR TO BASELINE.
COASTAL PLANNING & ENGINEERING, INC.
ESTERO ISLAND
BEACH RESTORATION PROJECT
PV



1983 ABT License Site Sketch



1986 ABT License Site Sketch



1987 ABT License Site Sketch

6. **Nemos (Exhibit 16)**

Geographic Location: Nemos is located in the Downtown District, adjacent to Crescent Beach Family Park.

Approval Type: In 1995, the Lee County Hearing Examiner approved a Special Permit (95-07-161.02S) to allow COP outdoors, restricted to 1,106 square feet with 12 indoor seats and 50 outdoor seats. In 2007, the Town Council affirmed the County's prior approval of COP with outdoor seating in Resolution 07-13, by a unanimous vote (Aye-Boback, Massucco, Reynolds, Meador and Shenko). While no site plan was included in the 1995 or 2007 approvals, the records of the Hearing Examiner in 1995, clearly indicate that the approval included "a outside area for about 50 seats on the beach." Further, the record indicates "that approximately 95% of their trade will come from the beach." A review of the 1998 aerial photo of the subject property indicates the chairs and tables being located directly on the beach and no pavers in the current location of pavers on the beach. In 2010, Town Council approved a Special Exception to allow COP with outdoor seating, with a site plan that clearly depicts outdoor seating in the EC Zoning District.

Legal Status: Based upon the aforementioned approvals, it appears that COP has been established seaward of the EC Zoning District line. Further, based upon the aerials and site plans, it appears that COP was approved directly upon the sand.

Method of Dominion and Control: None specifically required in the approving resolution.

Hours of Service: 7:00 AM till 2:00 AM.

Entertainment: Outdoor music is limited to between the hours of 10:00 AM and 10:00 PM.

7. The Cottage (including Beach Dog House and Gulf Shore Grill) (Exhibit 17)

Geographic Location: The subject property is located within the Downtown District.

Approval Type: The subject property received an Administrative Approval (COP2002-00013) from Lee County in 2002. This approval limited outdoor seating to the existing deck area. Field cards from the County Property Appraiser, dating back to 1976, indicate it has long been in use as a restaurant. There have been numerous code enforcement violations on the subject property, from unpermitted construction activity to alcohol service issues.

Legal Status: While the COP2002-00013 did not approve COP directly on the beach, it should be noted that almost the entire main structure is located within the EC Zoning District. Further, it should be noted that this approval was granted after the establishment of the RFC Future Land Use and EC Zoning District.

Method of Dominion and Control: While dominion and control of the property are established within the confines of the buildings and deck area, it should be noted that the open nature of the ground floor and orientation to the beachfront are indicative of inadequate establishment of dominion and control.

Hours of Service:

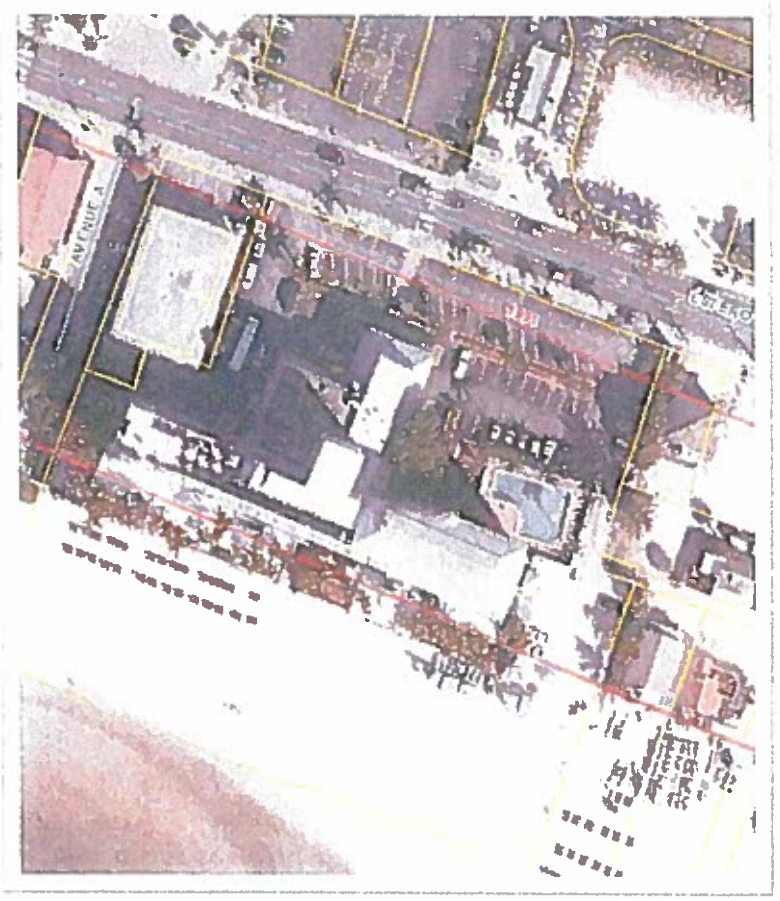
Beach Dog House: 10:00 AM till 10:00 PM

The Cottage: 10:00 AM till 2:00 AM

Gulf Shore Grill: 7:00 AM till 10:00 PM

Entertainment: Outdoor music and entertainment are prohibited in the outdoor seating areas.

8. Lani Kai (Exhibit 18)



Geographic Location: The subject property is located within the Downtown District.

Approval Type: In 1977, prior to construction of the Lani Kai, a portion of the subject property (Lots 3 & 4 and a portion of 5, of Block E) were rezoned and granted a Special Permit for COP for beer and wine. The lots approved do not extend to the beach and only encompass a minor area of the current building footprint of Lani Kai, closer to Estero Boulevard. Further, in 1989, Lee County signed off on the Zoning Approval portion of the State Alcohol License and in 2001 the Town signed off on the Zoning Approval portion of the State Alcohol License.

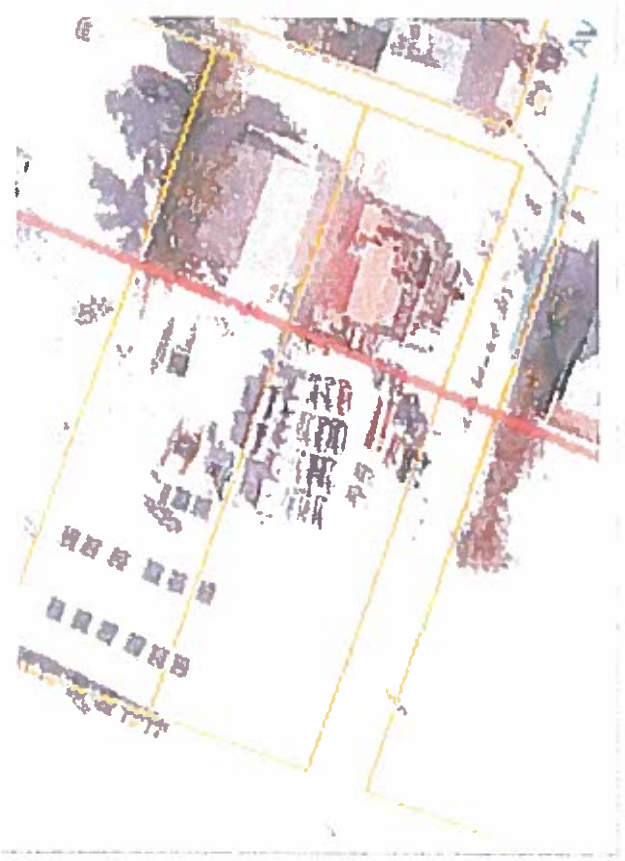
Legal Status: The records for the property are unclear as to whether or not the sale and consumption of alcohol was approved directly on the beach. However, it is clear that portions of the licensed premises do fall within the EC Zoning District.

Method of Dominion and Control: None established.

Hours of Service: None established specific to the property.

Entertainment: None established.

9. Wicked Wings (Exhibit 19)



Geographic Location: The subject property is located within the Downtown District.

Approval Type: In 2010 the Town Council unanimously approved a Special Exception for Wicked Wings (Resolution 10-01) for COP in the Downtown and EC Zoning Districts. In December, 2009, the LPA recommended approval of this Special Exception by a unanimous vote and no objections were expressed over the COP extending into the EC Zoning District, even though Town Staff made it abundantly clear that the request for COP was extending into the EC Zoning District. This Special Exception is significant, inasmuch as, in the prior month (November 2009) the LPA had opined to Town Council, in the form of an LPA Resolution, that the Comprehensive Plan had intended to restrict further expansion of COP into the Recreation Future Land Use and hence the EC Zoning District.

Legal Status: Resolution 10-01 approved COP in EC.

Method of Dominion and Control: COP was approved on the deck area, where the outdoor seating is located.

Hours of Service: 10:00 AM till 11:00 PM.

Entertainment: 10:00 AM till 11:00 PM.

10. Beach Pub (Exhibit 20)

Geographic Location: The subject property is located within the Downtown District.

Approval Type: In 1995, just before incorporation of the Town, the Lee County Hearing Examiner approved a Special Permit to allow COP on the subject property (95-10-173.02S). This approval granted COP service and consumption directly on the sandy beach and seaward of the 1978 CCCL Line. Further, the Hearing Examiner found that the Special Permit, as conditioned, "will protect, conserve and preserve environmentally critical areas and natural resources."

Legal Status: The Special Permit allows COP in the EC Zoning District.

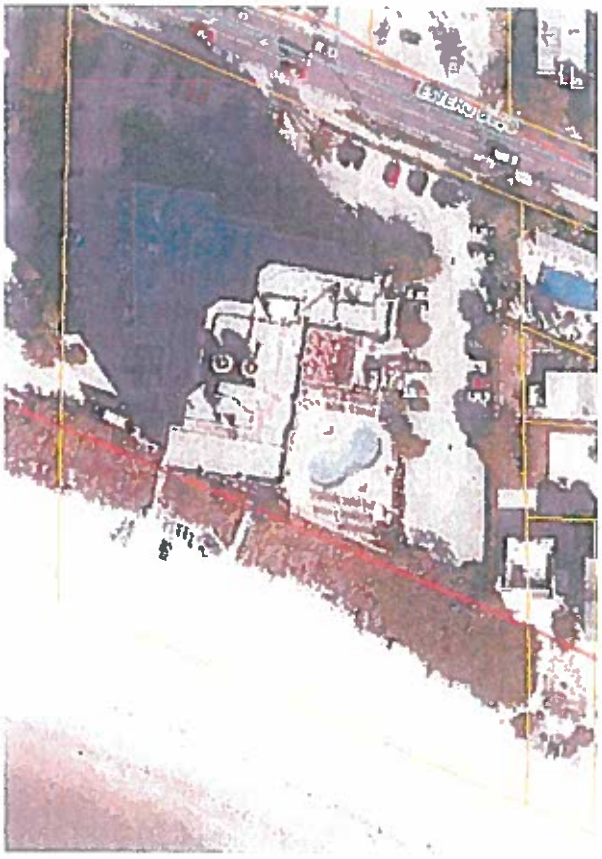
Staff considers this approval to be significant in several aspects, which are worthy of consideration in the formulation of any ordinance dealing with COP in the EC Zoning District. First, this case introduced some fairly stringent conditions on the approval, which included limitations on hours of operation, limitations on live music, the concept of allowing consumption directly on the sandy beach and establishing dominion and control through rope and post of the area of consumption, while limiting service of beer and wine to patrons from the bar (i.e. no service directly on the sand). Further, this approval introduced a significant concept that has to be dealt with, which is that these establishments rely upon pedestrian traffic along the beach for patrons and as such do not require parking for the consumption areas on the beach.

Method of Dominion and Control: Rope and post.

Hours of Service: 10:00 AM till 10:00 PM.

Entertainment: Live entertainment from 10:00 AM till 8:00 PM.

11. DiamondHead (Exhibit 21)



Geographic Location: The subject property is located within the Downtown District.

Approval Type: In 2001, Town Council approved Resolution 01-15 to allow COP on the outdoor deck area.

Legal Status: The deck area approved for COP does not extend into the EC Zoning District.

Method of Dominion and Control: Limited to deck area.

Hours of Service: 9:00 AM till 10:00 PM.

Entertainment: Outdoor entertainment limited to between the hours of 9:00 AM till 10:00 PM, subject to restrictions on amplification, recorded music and live music, which states as follows:

1. *The following conditions will apply to any outdoor music and/or entertainment located around the pool area or the proposed elevated deck:*

a. *Recorded background music that is restricted to a mono background system, which is defined as a 60 amps system with speakers limited to 1 to 2 watts that provides for a volume that is kept at or below normal conversation level, is allowed.*

b. *Only non-amplified string instruments are allowed to be played "live" without plugging into the mono background system.*

c. *Entertainment and/or live music, (excluding non-amplified string instruments), which is defined as a keyboard that is limited to the function of a piano with or without a Disc Jockey, referred to as a "DJ" and/or a vocalist is allowed only when the keyboard and all microphones, for a "DJ" or vocalist are plugged into the mono background system and the volume is kept at or below normal conversation level.*

d. *Any music that is played in the Lounge Area located on the first elevated floor must comply with Conditions 4.a., 4.b., and 4.c., or else the outside door(s) from the Lounge to the proposed elevated deck must be closed.*

12. Estero Island Beach Club (Exhibit 22)

Geographic Location: The subject property is located within the Downtown District.

Approval Type: In 1995, the Lee County Hearing Examiner approved a Special Permit (95-10-232.04S) to allow COP, which restricted service to the Tiki Bar and limited consumption to the pool deck area.

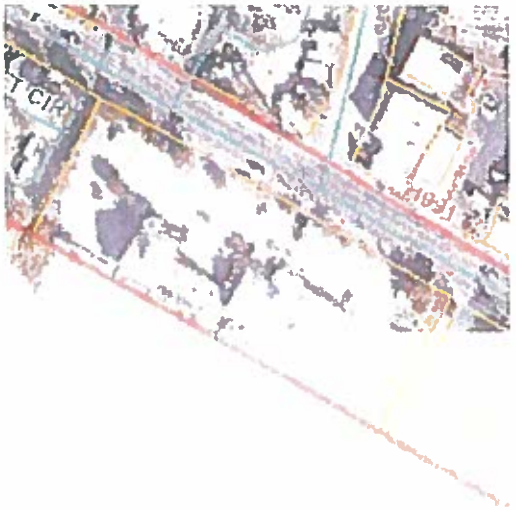
Legal Status: The pool deck area extends into the EC Zoning District, thus allowing COP in EC at this location.

Method of Dominion and Control: Service is limited to the Tiki Bar and consumption is limited to the pool deck area and further restricted to guests or residents of the resort.

Hours of Service: 8:00 AM till 10:00 PM.

Entertainment: Live entertainment is prohibited, but recorded background music is allowed.

13. Junkanoo (Exhibit 23)



Geographic Location: The subject property is located immediately adjacent to the Village District.

Approval Type: In 1990, the Lee County Hearing Examiner approved a Special Permit (90-1-18-SP-1) to allow COP with outdoor seating.

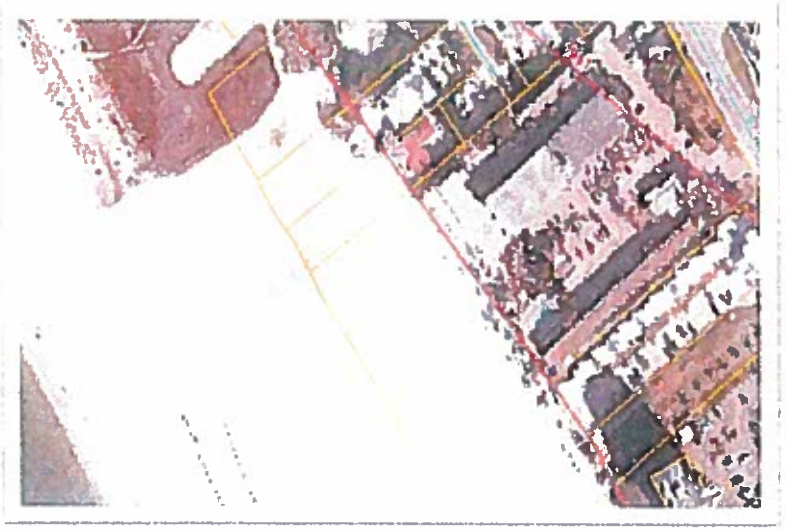
Legal Status: Based upon the wording in the Hearing Examiner's Conditions, it appears that COP was approved for the entirety of Lots 21 through 25, with the exception of the parking lot, as referenced in the Staff Presentation to Hearing Examiner. Since there are portions of Lots 21 through 25 that extend into the EC Zoning District, it appears that COP has been approved in EC for the subject property.

Method of Dominion and Control: None established.

Hours of Service: None established in the approval.

Entertainment: None established in the approval.

14. Outrigger (Exhibit 24)



Geographic Location: This resort in located towards the southern end of the island.

Approval Type: The subject property was rezoned to CPD (Commercial Planned Development) in 1995 by the Lee County Commission, prior to incorporation of the Town. Among the permitted uses established in the CPD, are: Bar or Cocktail Lounge

(existing), Commercial Use of Beach Front Seaward of the Water Body Setback Line (Existing) and Consumption on Premises (existing).

Legal Status: The listing of permitted commercial uses on the beach and approval of COP without any specific location restrictions supports a finding that COP was approved in EC for the subject property.

Method of Dominion and Control: None established.

Hours of Service: None established.

Entertainment: None established.

15. Gullwing Resort (Exhibit 25)

Geographic Location: This resort in located towards the southern end of the island. (Zoning District?)

Approval Type: In 1997 the Town Council approved a Special Permit (Resolution 97-10) to allow COP on the subject property. However, due to LPA about noise in relation to the outdoor seating, the request for approval of COP in conjunction with the outdoor seating was withdrawn prior to Town Council consideration.

Legal Status: COP is not approved in the EC Zoning District on the subject property.

Method of Dominion and Control: N/A

Hours of Service: N/A

Entertainment: N/A

16. Holiday Inn (Exhibit 26)

Geographic Location: This resort in located towards the southern end of the island. (Zoning District?)

Approval Type: In 1988, the Lee County Commission granted a Special Permit (Resolution Z-88-291) to allow COP with outdoor seating.

Legal Status: Based upon our review of the aerial photo of the subject property, a portion of the outdoor seating area for COP is located with the EC Zoning District.

Method of Dominion and Control: Limited to the outdoor seating areas identified in the approval.

Hours of Service: None established.

Entertainment: None established.

17. Sandbar Resort (Exhibit 27)

Geographic Location: This motel/hotel in located towards the southern end of the island. (Zoning District?)

Approval Type: In 1993, the Lee County Hearing Examiner approved a Special Permit to allow COP with outdoor seating. The outdoor COP was limited to the pool and recreation area within the seawalled portion of the property.

Legal Status: COP is not allowed in the EC Zoning District on the subject property.

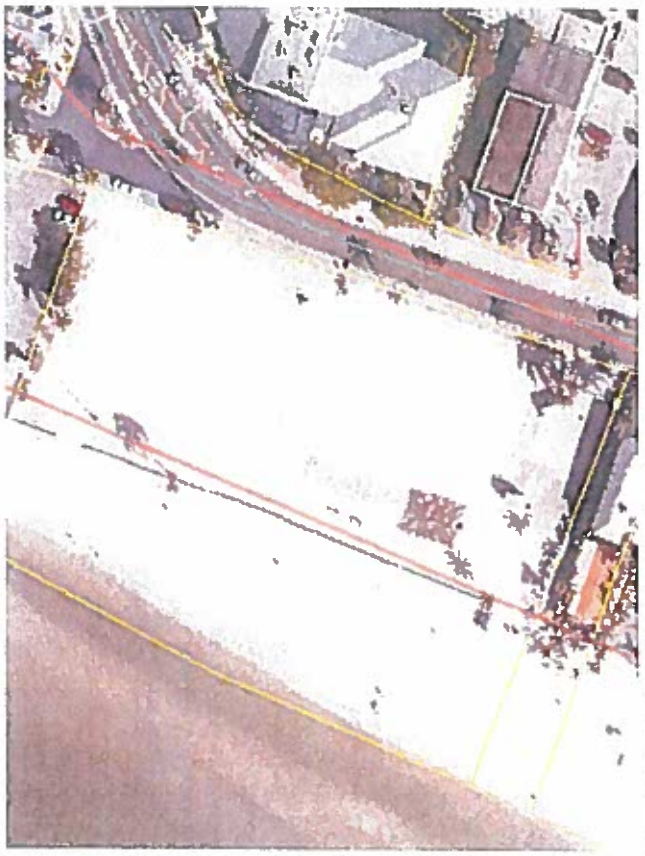
Method of Dominion and Control: Confined to pool deck area, with landscape requirements and limited to hotel guests only.

Hours of Service: 7:00 AM till 9:30 PM, Sunday through Thursday and 7:00 AM till 10:30 PM, Friday and Saturday.

Entertainment: No outdoor entertainment or loud music allowed.

18. Breakers Econo Lux Inn (Exhibit 28)

Geographic Location: The subject property is located within the Downtown District and is now Crescent Beach Family Park (formerly Breakers Econo Lux Inn).



Approval Type: In 1991, the Lee County Hearing Examiner approved a Special Permit to allow a bar on the subject property, within the confines of the building that stood at the time of the approval.

Legal Status: It does not appear that the area approved for COP within the confines of the building would have fallen within the EC Zoning District.

Method of Dominion and Control: N/A.

Hours of Service: N/A.

Entertainment: N/A.

Analysis of Approved COPs:

Of the 18 properties identified with COP licenses adjacent to the EC Zoning District, 12 have been identified that were approved for COP in the EC Zoning District. Of those approved for COP, 7 are located in the Downtown District and 5 are located outside the Downtown District. Of the 5 approved outside the Downtown District, 4 are resorts. Of the 12 approved for COP in EC, 5 or 6 are resorts, 4 are restaurants/bars, 1 is a restaurant and 1 is a bar. Of the 12 approved for COP in EC, 7 are approved directly on the beach and 6 have no restrictions on outdoor music. The most common method of approval has been Special Permit/Exception, with 7 having been granted by SP/SE. Of the 4 resorts outside the Downtown District, 2 were granted by CPD rezoning. 5 of the COP approvals in EC were approved by the Town, the rest were approved by the County prior to the Town's incorporation. One of the more significant findings of our analysis was that no COP requested in EC has ever been denied. Given the number of COP approvals in EC, it is difficult to conclude that the Comprehensive Plan intended to restrict further expansion of COP in the Recreation Future Land Use. Of equal concern in this regard, is the lack of discussion during the public hearings for these approvals, regarding the issue of COP in EC and Recreation Future Land Use. In reviewing the transcripts for all of these approvals, it is abundantly clear that the larger concern expressed during public hearings related to concerns about outdoor entertainment.

Conclusions of Approved COPs:

Our analysis concludes that COP has been established as a permissible use in the EC Zoning District for as long as that district has existed, with varying methods of approval. While the methods of approval are valid means of controlling COP in EC, the lack of consistency of methods or established guidance is an area of concern. Further, we have concluded that there has been an overall lack of consistency in conditions of approval, including dominion and control, hours of operation and entertainment restrictions. The lack of consistency in terms of conditions of approval reinforces our perception of the lack of an appropriate regulatory framework.

Having said that, it should be noted that there has been some historic consistency in some limited regards, as it relates to the approval of COP in EC. For instance, the majority of COP approvals in EC were granted for establishments within the Downtown District and those granted outside the Downtown District were primarily granted to the larger resorts in Town, two of which were granted by CPD rezoning. Special Permits/Exceptions granted 7 of the 11/12 COP approvals. We believe there is a strong precedent for requiring future approvals within the Downtown District to require Special Exception approval and those outside the Downtown District to be limited to resorts by CPD zoning. Further, some of the approvals contained conditions of approval that provide a strong basis for formulating a meaningful ordinance. More importantly, based upon

Staff observations during the last tourist season, there are some restrictions that are more effective in mitigating potentially negative impacts. For example, well defined methods of dominion and control have more success in preventing the migration of alcohol from one property to another.

Considerations in crafting an ordinance

Assuming that it is the policy of Town Council to not prohibit COP in EC, then an appropriate regulatory approach should be developed in the form of an ordinance. In order to assist Staff in developing an ordinance to regulate COP in the EC Zoning District, it is constructive to facilitate a dialogue on the various methods of regulation, which includes process, location restrictions and conditions. We respectfully request your input on means of regulating COP in EC. Specifically, we need input on the three primary considerations; process, location restrictions and conditions of approval.

Process:

There are four primary zoning processes for regulating COP in EC, which we would offer for your consideration: Special Exception; Planned Development Zoning; Administrative Approval; or, Permitted Use.

Location Restrictions:

As our analysis in Section 4 of this report (Historic Approvals & Legal Determinations) concluded, 7 of the 12 approved COPs in EC are located within the Downtown District and of the 5 located outside the Downtown District, 4 are resorts. Given the fact that the 12 approved COPs evolved over the course of three decades, we believe that some guidance should be taken from the location precedence set over time. Accordingly, we believe there should be some regulatory framework based upon geographic considerations. The fact that 4 of the 5 COP's located outside the Downtown Zoning District are resorts, suggests that serious consideration should be given to limiting COP's outside the Downtown Zoning District. Further, the fact that 2 of the 4 Resorts were approved for COP by CPD rezoning, suggests that, should the regulatory bar be elevated outside the Downtown, a more rigorous review process should be required. Also, it suggests that consideration should be given to restricting COP outside the Downtown District to resorts only.

Conditions of Approval:

Based upon our analysis in Section 4 of this report, it is clear that some consideration has historically been given to developing conditions of approval to mitigate any potentially negative impacts. This is significant in a couple regards. First, it is a clear acknowledgement that COP in EC has been viewed as having the potential to have adverse impacts. Second, in some instances there is consistency in the conditions imposed on some of the existing COPs in EC. However, it also has to be noted that there are broad inconsistencies in the conditions imposed on the existing COPs in EC. Accordingly, we would strongly recommend that a uniform set of conditions be developed that are applied consistently.

Accordingly, following are some of the potential standard conditions that can and should be considered in developing an ordinance:

1. Principal Use Restrictions- Should COP in EC be limited as an ancillary use to specific principal uses, i.e. restaurants, bars, resorts, etc.; and

2. Specific Conditions of Approval- What specific conditions should be required, for example:

    a. Plastic cups, aluminum cans or glass bottles.

    b. Hours of service/consumption in EC.

    c. Location restrictions of service/consumption in EC, i.e. within property lines under same ownership and no closer than 10 feet of the Mean High Water Line (MHW).

    d. Method of Dominion Control- i.e. rope and post, deck, vegetation, signage and/or security detail.

    e. Restrictions on tables.

    f. Management/maintenance responsibilities of owners.

    g. Security requirements.

    h. Signage requirements, i.e. alcohol purchased on one property is prohibited from being taken onto another property.

    i. Insurance requirements.

    j. Seasonal restrictions, i.e. should hours of service/consumption be further restricted during times of the year, such a turtle nesting season.

    k. Annual renewal requirements.

    l. Terms of revocation and revocation process.

m. Fees, i.e. initial fee and annual renewal fees.

n. Other considerations that LPA deems appropriate.

Closing Thoughts:

Based upon LPA input and Town Council's previous direction, Staff will prepare a draft ordinance for discussion at the November 8 LPA Meeting.

COP in EC
10-06-11

EXHIBIT 1

COP Timeline				
Date	Town or County Ordinance/ Resolution Chnages regarding COP	Site Specific COP Approvals	Nature of Ordinance, Resolution or Approval	Exhibit
Mar-75	County Ord. 75-5		County repeals alcohol provisions for consistency with change in State Laws.	
Jun-76	County Ord. 76-9		Special Permit required for COP within 500' of school or church.	
Jan-79	County Ord.79-1		Clarifies Ord 76-9 that measurement must be by straight line.	
Jan-80	County Ord. 80-4		Variance required for COP in Commercial Zoning Districts & finding requirements	
Sep-81	County Ord. 81-41		Special permit required for specific Zoning Districts	
Dec-95		Co. Case 95-10-232.04S	Special Permit for COP on the pool deck seaward of the 1978 CCCL (EC Zoning District). Estero Island Beach Club.	
Dec-95		Co. Case 95-07-161.02S	Special Permit for COP on the beach is approved at 1154 Etsero (AKA: Nemos)	
Dec-95		Co. Case 95-10-173.02S	Special Permit to allow COP directly on the sandy beach, seaward of the 1978 CCCL (EC Zoning District). Beach Pub.	
Dec-95			Town of Fort Myers Beach is incorporated	
Apr-96	County Ord. 95-08		County Laws and Town Jurisdiction	
Jul-96	Town Ord. 96-05		Town Open Container Ordinance	
Jul-96	Town Ord. 96-6		Established Special Permit requirment	
Sep-96	Town Ord. 96-20		Town Ordinance creating Redevelopment Overlay District and establishing AA and SP for COP	
Dec-98	Town Ord. 98-13		Penalty provision added to Open Container Ordinance	
Oct-99			Town Resolution allowing deck area & trellis over 1978 CCCL (EC Zoning District). Pierside Grill.	
Mar-00			Town Resolution allowing COP on pool deck forward of 1978 CCCL (EC Zoning District). Edison Beach House.	
Jun-01			Town Council approves Special Permit for COP at 2000 Estero (AKA: Diamondhead), a portion of this approved site extends into the EC Zoning District.	
Mar-03	Town Ord.03-03		Town Ordinance creating Chapter 34 and COP provisions	
May-04	Town Reso. 04-17		Recognized Town Interim Zoning Map, without EC Zoning District	
May-04	Town Reso. 04-16		Created Official Town Zoning Map and created EC Zoning District that bifurcated zoning on properties that were previously one zoning district to Mean High Water Line	
Feb-07			Town recognized previously approved Special Permit for Nemos (Case 95-07-161.02S) from December 1995	
Nov-09	LPA Reso. 2009-24		LPA Resolution recommending to Town Council that the Comprehensive Plan "does restrict further expansion of on-preises consumption of alcholic beverages on the Gulf Beaches within the Town of Fort Myers Beach."	
Dec-09		LPA Reso. 2009-29	LPA Resolution recommending approval of Special Exception for 61 Avenue C (AKA: Wicked Wings) to allow COP in the Downtown and EC Zoning Districts.	
Jan-10			Town Council approves Special Exception for 61 Ave C (AKA: Wicked Wings)to allow COP in Downtown and EC Zoning Districts.	
Jun-10		LPA Reso. 2010-06	LPA Resolution recommending approval of Special Exception for 1154 Estero (AKA: Nemos) to allow COP in the Downtown and EC Zoning District.	
Jul-10			Town Council approves Special Exception for 1154 Estero (AKA: Nemos) to allow COP in Downtown and EC Zoning Districts.	

Legend	
	COP's approved by County, prior to Incorporation, seaward of the 1978 CCCL (EC Zoning District)
	COP's approved by Town Council, subsequent to incorporation, in the EC Zoning District
	Recreation Future Land Use Category created, based upon 1978 CCCL and becomes the basis for the subsequent creation of the EC Zoning District.

EXHIBIT 2

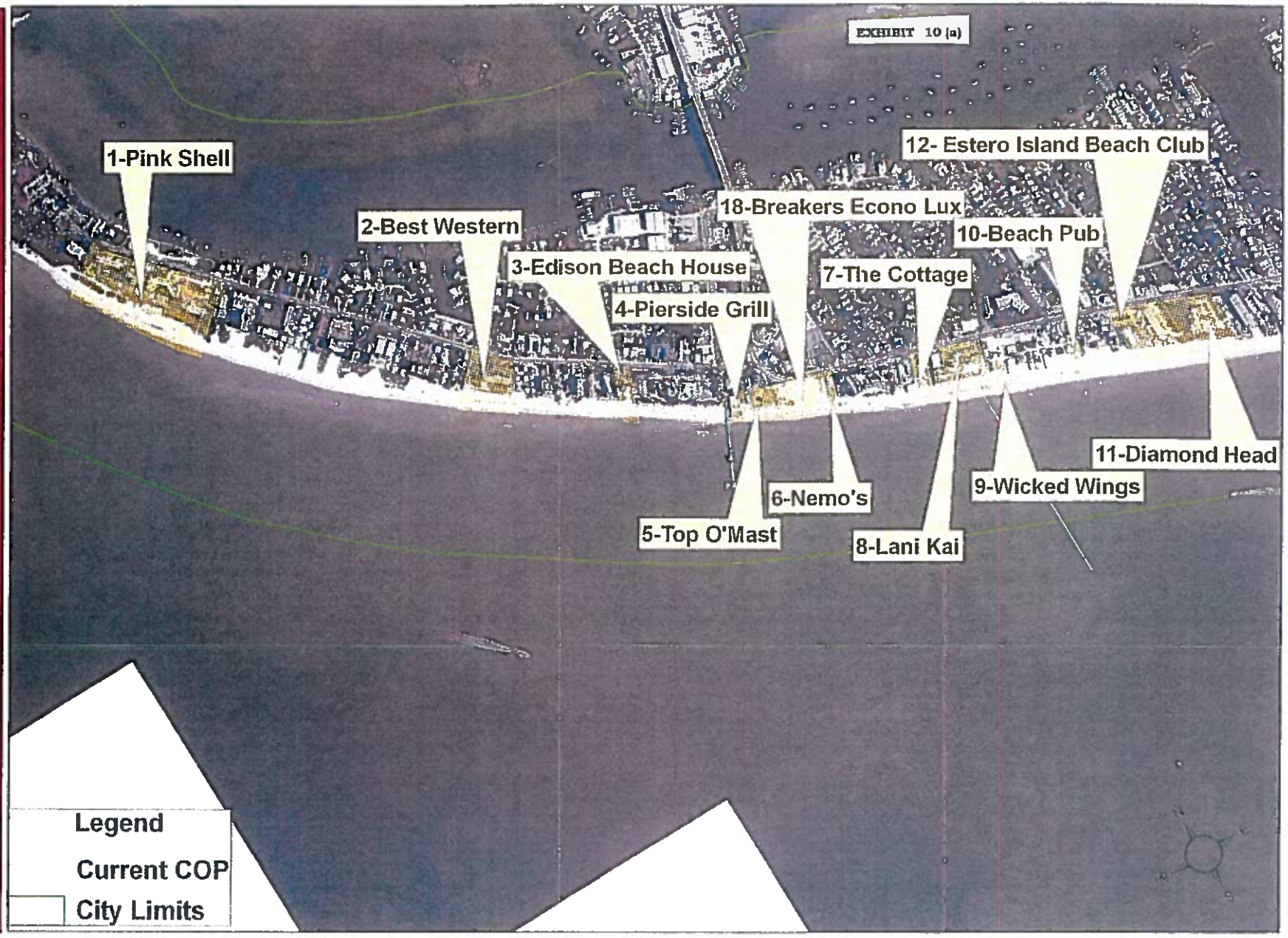
COP in EC Zoning District Inventory

Property ID Number	Business Name	Principal Use	Zoning Approval #'s	Downtown Zoning District	Method of Approval	Approved for COP in EC Zoning District	Approved on Beach	Method of Dominion and Control (i.e. rope & post, deck, signage, security, etc.)	Hours of Service Limitations	Outdoor Entertainment Restrictions
1	Pink Shell	Resort	[illegible]		PUD and CPD Zoning	Yes	Yes	None required	11:00AM and 10:00 PM	Live outdoor music is prohibited outdoors. Recorded is allowed between the hours of 11:00 AM and 10:00 PM.
2	Best Western	Resort	Co. Case 95-08-061.02S		Special Permit	No		Limited to roof deck area	10:00 AM till 10:00 PM	No live music and restrictions on recorded music.
3	Edison Beach House	Resort	Resolution 04-12		Special Permit	Yes	Yes	No specific requirements established for consumption area.	Noon till 8:00 PM	No conditions.
4	Pierside Grill	Restaurant and bar	Resolution 99-39	X	N/A	Yes		No conditions.	No conditions.	No conditions.
5	Top O' Mast	Bar	None	X	N/A	No		Deck and railing.	None.	None.
6	Nemo's	Restaurant and bar	Co. Case 95-07-161.02S, Town Reso. 07-13 and 10-15	X	Special Exception	Yes	Yes	No conditions.	7:00 AM till 2:00 AM	Outdoor music is limited to between the hours of 10:00 AM and 10:00 PM.
7	The Cottage (AKA: Gulf Shore Grill)	Restaurant and bar	COP2002-00013	X	Administrative Approval	Yes		Deck and railing.	Varies	Outdoor music is prohibited.
8	Lani Kai	Resort	None	X	N/A	Yes	Yes	None	None	None
9	Wicked Wings	Restaurant	Town Reso. 10-03	X	Special Exception	Yes		Deck and railing.	10:00 AM till 11:00 PM	10:00 AM till 11:00 PM
10	Beach Pub	Bar	Co. Case 95-10-173.02S	X	Special Permit	Yes	Yes	Rope and post.	10:00 am till 10:00 PM	10:00 AM till 8:00 PM
11	DiamondHead	Resort	Town Reso. 09-15	X	Special Exception	No		Deck and railing.	9:00 AM till 10:00 PM	9:00 AM till 10:00 PM w/ conditions.
12	Estero Island Beach Club	Resort	Co. Case 95-10-232.04S	X	Special Permit	Yes		Deck and railing.	8:00 AM till 10:00 PM	Live entertainment is prohibited.
13	Junkanoo	Restaurant and bar	Co. Case 90-1-18-SP-1		Special permit	Yes	Yes	None	None	None
14	Outrigger	Resort	Co. Z-95-085		CPD Rezoning	Yes	Yes	None	None	None
15	Gullwing Resort	Resort	[illegible]		Special Permit	No		N/A	N/A	N/A
16	Holiday Inn	Resort	Co. Z-88-291		Special Permit	Yes		Outdoor seating area	None	None
17	Sand Bar Resort Motel	Hotel/Motel	Co. Case 93-12-09-SP-02		Special Permit	No		Deck	Varies	Not allowed
18	Breakers Econo Lux Inn	Former Motel	Co. Case 91-8-8-SP-1	X	Special Permit	No		N/A	N/A	N/A

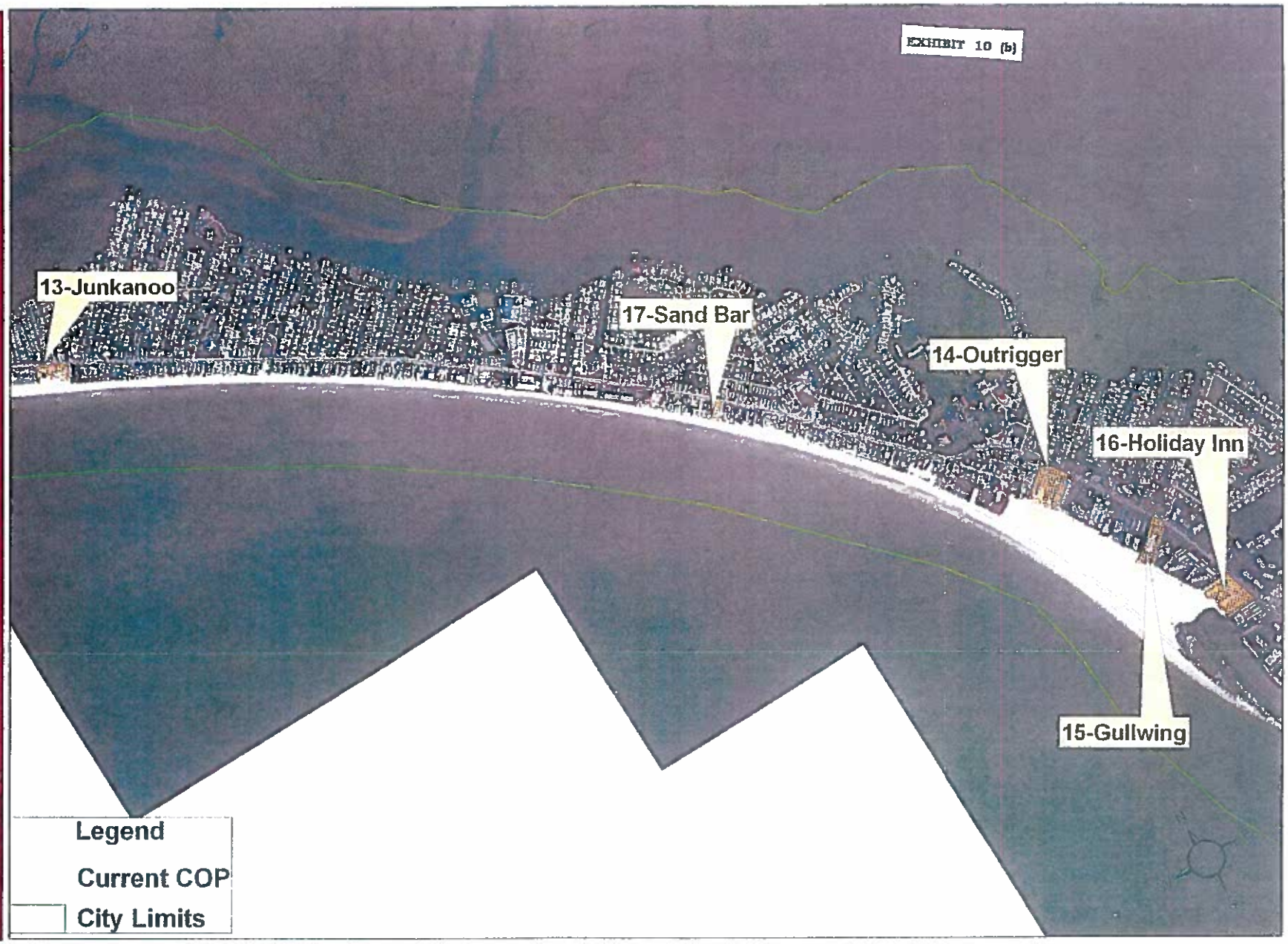
COP's approved by County, prior to incorporation, seaward of the 1978 CCCL (EC Zoning District)

COP's approved by Town Council, subsequent to incorporation, in the EC Zoning District

COP in EC Zoning District Inventory
Map 1



COP in EC Zoning District Inventory
Map 2



Attachment I

ADMINISTRATIVE APPROVAL
TOWN OF FORT MYERS BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
COP2013-0003
Beach Pierside Grill COP in the EC

WHEREAS, Martin S. York, manager partner of Pierside Ft. Myers Beach, LTD applied for administrative approval for expansion of outdoor seating into the Environmentally Critical zoning district for sales, service and consumption on premises of alcoholic beverages in conjunction with a restaurant under the provisions of Ordinance 12-03; and

WHEREAS, the subject property is located at 1000 Estero Boulevard, Fort Myers Beach, FL and is legally described in the attached **Exhibit A**; and

WHEREAS, the current zoning of the subject property is DOWNTOWN and EC (Environmentally Critical); and

WHEREAS, the applicant submitted an application containing the information required by Fort Myers Beach Land Development Code (LDC) Section 34-1264(g)(1); and

WHEREAS, the subject property currently contains a restaurant with a 4COP-SRX alcohol beverage license ("The Beach Pierside Grill"); and

WHEREAS, the applicant submitted a survey of the subject property which is attached hereto and incorporated herein as **Exhibit B**; and

WHEREAS, a site plan, as submitted by the applicant, depicting the 'proposed COP expansion area' for the sales, service and consumption on premises of alcoholic beverages into the EC district is attached hereto and incorporated herein as **Exhibit C**; and

WHEREAS, the Director makes the following findings of fact:

1. All applicable standards have been met;
2. The premises are suitable in regard to location, site characteristics, and intended purpose; and
3. All the preceding clauses introduced by "WHEREAS" are incorporated herein as findings of fact;

NOW, THEREFORE, the Director **APPROVES** the requested administrative approval for expansion of outdoor seating into the Environmentally Critical zoning district for sales, service and consumption on premises of alcoholic beverages in conjunction with a restaurant under the provisions of Ordinance 12-03,

SUBJECT TO the following conditions:

1. The area of expansion of the licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premises (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premises must be located immediately adjacent to and contiguous with the EC zoning district.
2. Patrons of the permitted establishment may not bring any alcoholic beverages or coolers into the licensed premises in the EC zoning district, nor may they consume any alcohol on the premises that has not been purchased from the permitted establishment.
3. Alcohol served in the EC zoning district may not be dispensed in glass or aluminum containers of any type.
4. The permit holder shall be responsible for ensuring that the licensed premises in the EC zoning district is at all times free of litter and debris. Refuse containers that meet the requirements of LDC Section 34-1264(g)(1)b.iv.4. must be provided.
5. Hours of service and consumption for the area of the licensed premises that is labeled 'proposed COP expansion area' on **Exhibit C** shall be limited to between the hours of 11:00AM and one (1) hour after Sunset or 9:00 PM, whichever is earlier, except for any additional hours that may have been granted by a special events permit.
6. Entertainment within the area of the licensed premises that is located in the EC zoning district may not extend into the area labeled 'proposed COP expansion area' as shown on **Exhibit C**.
7. Applicant shall maintain a valid Certificate of Insurance that covers the area of the licensed premises that is located in the EC zoning district.
8. The maximum area of expansion is 1,642 square feet as depicted on **Exhibit C** and labeled 'proposed COP expansion area.'
9. The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post. The installation of the rope and post will require Florida Department of Environmental Protection (DEP) approval as well as applicable Town building permits.
10. A maximum of one six-foot wide pedestrian access opening is allowed per one hundred feet of the rope and post along the side parallel to the waterline. Each access point in the rope and post to the beach shall contain a sign, at each entrance, stating on both sides, "NO ALCOHOL ALLOWED BEYOND THIS POINT." The sign shall have a maximum dimension of two (2) feet by one (1) foot.
11. The property shall comply with all sea turtle protection requirements contained in Chapter 14 of the Land Development Code. All beach furniture,

including but not limited to beach chairs, table and umbrellas shall be removed from the beach by one (1) hour after sunset or 9:00 PM whichever is earlier

12. The area immediately adjacent to the existing outside deck area and labeled 'Not Part of COP Expansion Area' on the attached **Exhibit C** must remain at all times planted with the beach vegetation as installed in July 2012, and managed as per the conditions of the Town of Fort Myers Beach Nourishment Vegetation Management Plan, and is not approved at any time for outdoor consumption on premises.

APPROVED this 19th day of March, 2013.

By: _____

Walter G. Fluegel, ACIP
Director of Community Development
Town of Fort Myers Beach

Description as Recorded in Official Record Book 1547 at Page 1078:

From the Southwest corner of Block "E", CRESENT PARK ADDITION, Plat Book 4, page 46, Public Records of Lee County, Florida, on the East line of Section 24, Township 46 South, Range 23 East, run South along said section line for 53.24 feet to the South right-of-way line of Estero Boulevard, 50 foot right-of-way; thence run Northwesterly at an inclusive angle of 68°54' with said section line for 762.53 feet along the South right-of-way line of Estero Boulevard to the point of beginning; thence continue Northwesterly along said right-of-way line for 86 feet to the Easterly right-of-way line of the County Road running from Matanzas Pass Bridge (San Carlos Boulevard) to the Gulf of Mexico; thence deflect left 83°23' and run Southwesterly parallel to and 47 feet measured on a perpendicular, from the centerline of the last mentioned road, to the waters of the Gulf of Mexico; thence run Southeasterly, along said waters, to a point on a line perpendicular to Estero Boulevard, and passing through the point perpendicular to Estero Boulevard, and passing through the point of beginning; thence run Northeasterly, along said perpendicular line to the point of beginning.

EXHIBIT B

SURVEY PLAT

OF

A PARCEL OF LAND

LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,

TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

N

NOTES:

SURVEY BASED ON THE R/W MAPS FOR ESTERO BLVD PREVIOUSLY PREPARED BY THIS FIRM DATED 2010.

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

CO-ORDINATES AND BEARINGS ARE STATE PLANE GRID-FLORIDA WEST ZONE NAD 1983/1990 ADJUSTMENT HOLDING NGS CONTROL POINT "BOOB-2".

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

ALL UTILITIES AND IMPROVEMENTS ARE NOT SHOWN.

STRAP NO: 24-46-23-W3-00021.0000

ADDRESS: 1000 ESTERO BLVD, FORT MYERS BEACH, FL 33931

DATE OF LAST FIELD WORK: 2-8-13.

DESCRIPTION AS RECORDED IN OFFICIAL RECORD BOOK 1547 AT PAGE 1077:

FROM THE SOUTHWEST CORNER OF BLOCK "E", CRESENT PARK ADDITION, PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, ON THE EAST LINE OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, RUN SOUTH ALONG SAID SECTION LINE FOR 53.24 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD, 50 FOOT RIGHT-OF-WAY; THENCE RUN NORTHWESTERLY AT AN INCLUSIVE ANGLE OF 68°54' WITH SAID SECTION LINE FOR 762.53 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF ESTERO BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 86 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE COUNTY ROAD RUNNING FROM MATANZAS PASS BRIDGE (SAN CARLOS BOULEVARD) TO THE GULF OF MEXICO; THENCE DEFLECT LEFT 83°23' AND RUN SOUTHWESTERLY PARALLEL TO AND 47 FEET MEASURED ON A PERPENDICULAR, FROM THE CENTERLINE OF THE LAST MENTIONED ROAD, TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY, ALONG SAID WATERS, TO A POINT ON A LINE PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT PERPENDICULAR TO ESTERO BOULEVARD, AND PASSING THROUGH THE POINT OF BEGINNING; THENCE RUN NORTHEASTERLY, ALONG SAID PERPENDICULAR LINE TO THE POINT OF BEGINNING.

ORIGINAL

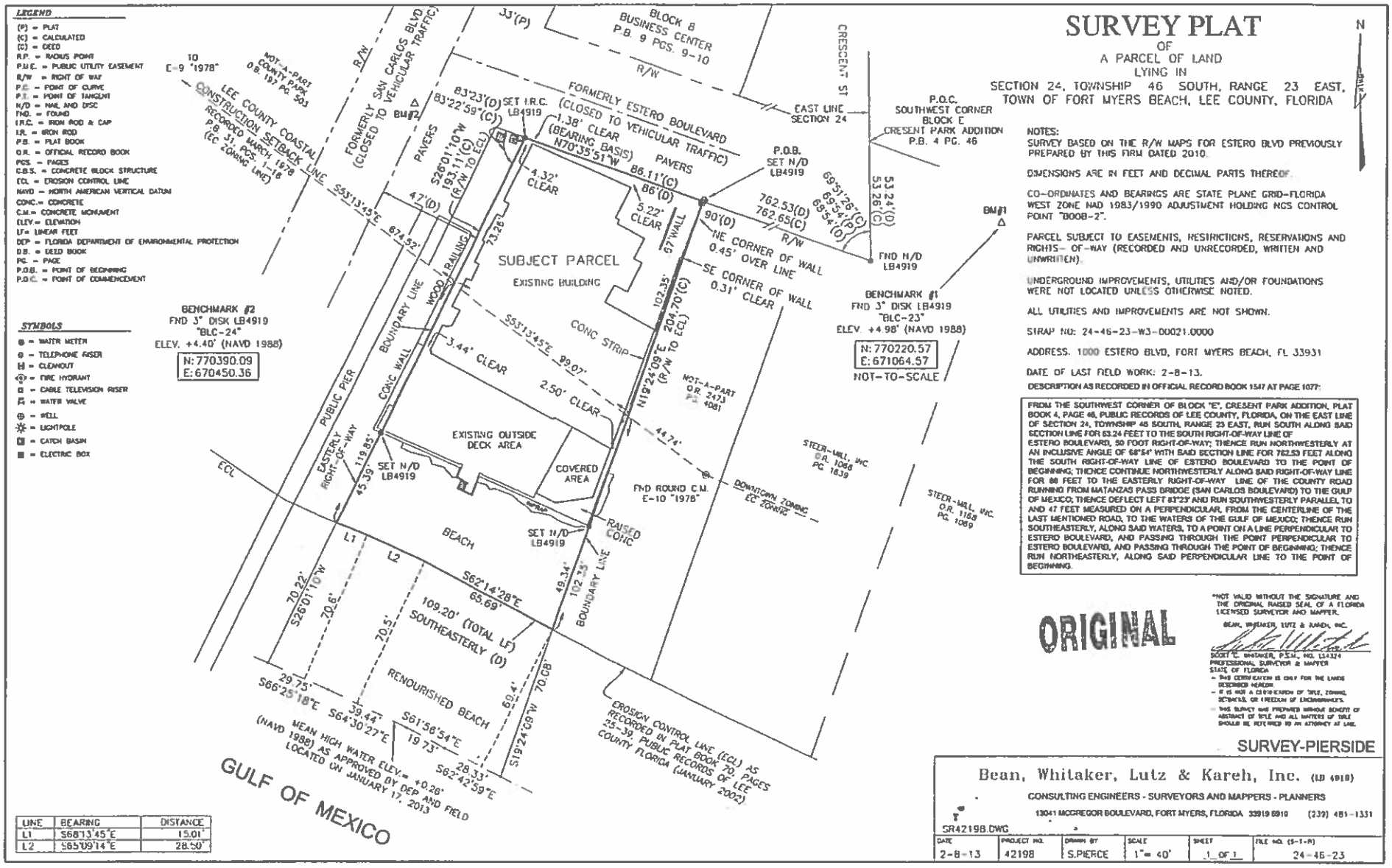
*NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BEAN, WHITAKER, LUTZ & KAREH, INC.

SCOTT C. WHITAKER, P.S.M., NO. LS 4324
PROFESSIONAL SURVEYOR & MAPPER
STATE OF FLORIDA

- THIS CERTIFICATION IS ONLY FOR THE LANDS DESCRIBED HEREON.
- IT IS NOT A CERTIFICATION OF TITLE, ZONING, SETBACKS, OR FREEDOM OF ENCUMBRANCES.
- THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW.

SURVEY-PIERSIDE



LINE	BEARING	DISTANCE
L1	S68°13'45"E	15.01'
L2	S65°09'14"E	28.50'

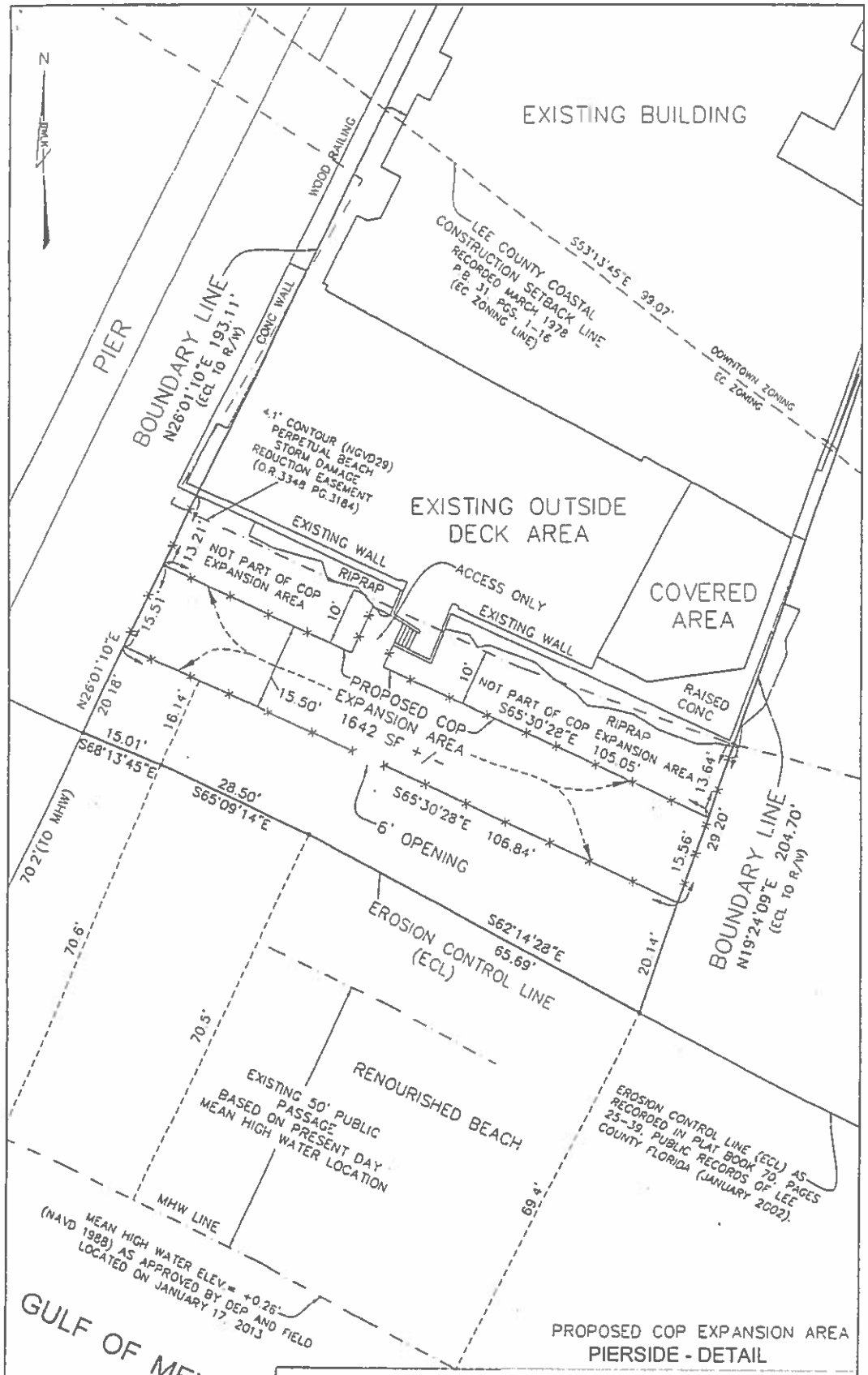
Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 McGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919 6910 (239) 481-1331

SR42198.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
2-8-13	42198	S.PIERCE	1"= 40'	1 OF 1	24-46-23



PROPOSED COP EXPANSION AREA
PIERSIDE - DETAIL

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 481-1331

STRAP NO. 24-46-23-W3-00021.0000

ADDRESS 1000 ESTERO BLVD.
FORT MYERS BEACH, FL

DETAIL_42198.DWG

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
1-17-13	42198	S.PIERCE	1"= 20'	2 OF 2	24-46-23