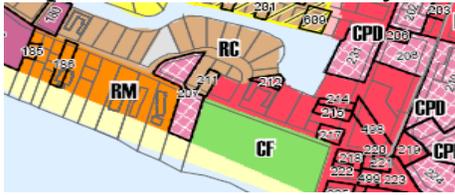


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Town Council

CC: Jack Green, Town Manager
Anne Dalton, Town Attorney

From: Frank Shockey, Community Development Director

Date: January 8, 2009

RE: DCI2006-0001 and DCI2006-0002 White Sand, Captiva Villas, and Bayside
CPD amendments

At the December 7, 2009 continued hearing of the “Pink Shell” CPD amendments, some members of Town Council expressed concern in response to the comments by the applicant and some members of the public regarding a history of prior conditions and differing histories of prior resolutions affecting parts of the subject property. At the time of the initial application for these amendments in 2006, the applicant submitted two separate applications: one for the “Bayside” portion of the property to the northeast of Estero Boulevard, and one for the developer-owned property on the Gulf of Mexico side of Estero Boulevard. Presently the gulf side application includes the White Sand and Captiva Villas properties and the developer-owned property around and under these buildings.

The draft resolution previously presented to the Town Council captured the recommendations of staff and the LPA. In an effort to assist the Town Council in choosing among options to address the concerns of the applicant and the public regarding the history of prior conditions, staff has provided two additional draft resolutions. These two additional resolutions pertain separately to the “Bayside” portion of the subject property and the “Gulf Side” portion of the subject property. They also provide for the continuing effect of the terms and conditions

of prior resolutions instead of following the stated intent of Land Development Code Section 34-214(b).

These two additional draft resolutions are provided as an additional option for the Town Council's consideration and are not a modification of staff's recommendations. Staff's recommendations are to be found in the staff report and in subsequent supplemental memoranda.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 09-33

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, with authorization of at least 75 percent of the unit owners of White Sands Villas, a condominium, and at least 75 percent of the unit owners of Captiva Villas, a condominium, as required by Land Development Code (LDC) Section 34-201, (together, "Applicant") has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for White Sands CPD, Captiva Villa CPD, and Bayside CPD to approve a revised, unified, and updated master concept plan (MCP), schedule of uses, conditions, and deviations, reflecting the terminology and regulations in the current LDC, as required by LDC Section 34-214, for the Pink Shell CPD on approximately 9.6 acres (including adjacent beaches not rezoned), and to make certain changes including the addition of uses to the schedule of uses and MCP, clearly indicating all relevant deviations previously approved, altering prior limiting conditions, and to have a current and complete resolution for the Pink Shell CPD that does not require references to a previous resolution on the same property, in accordance with LDC Section 34-214; and

WHEREAS, the subject property is located at 190 Estero Boulevard, 200 Estero Boulevard, 275 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0320, 24-46-23-W1-00700.0290, 24-46-23-W1-04000.00CE, and 24-46-23-W1-04100.00CE, with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot as shown on proposed MCP.
2. Existing boat ramp on Bayside parcel to remain, with pedestrian walkway rerouted, as shown on proposed MCP.
3. Allow for possible relocation of pedestrian beach access on Lot 36, Block D, Island Shores Unit 4 Subdivision, and Lot 37, Block F, Island Shores Club Section Subdivision (required by prior zoning conditions), to the northwesterly side of Lot 38, Block F, Island Shores Club Section Subdivision, as shown on the proposed MCP.
4. Allow for dedication of 5 feet of right-of-way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.

5. Make alterations to the landscaping of the right-of-way buffer and parking lot and open space areas on gulf side parcels to allow for possible right-of-way dedication and placement of stormwater management areas.
- ~~6. Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to "guests of the Pink Shell Resort only."~~
- ~~7. Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
- ~~8. Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
9. Add a trash compactor to the MCP near the northwesterly corner of Lot 39, Block D, Island Shores Club Section Subdivision (adjacent to Bowditch Point Regional Park).
10. Add 8 valet parking spaces at the northwesterly end of the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end of the parking lot on the Bayside parcel.
11. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which the hearing was continued to December 7, 2009, at which the hearing was further continued to December 21, 2009, at which the hearing was further continued to January 19, 2010, at which point the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES/DENIES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL/DENIAL of thirty (30) conditions and DENIAL OF (____) condition(s)**. The Town Council **APPROVES/DENIES Deviation #2 (if modified as recommended)**. The Town Council **APPROVES/DENIES Deviation #3**. All approvals and denials are set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the MCP titled "Pink Shell CPD Master Concept Plan" for cases DCI2006-0001 and DCI2006-0002, stamped received February 10, 2009, except as specifically modified by conditions or deviations herein. In accordance with LDC Section 34-216(b)(4), the MCP must be updated to reflect the changes approved and required by Town Council, and this condition may change to reflect such new submittal date of the MCP. Specifically the MCP must be updated to reflect the external boundary of the property subject to these amendments and must not include adjacent properties whose owners did not join in the application. If changes to the MCP are subsequently pursued, appropriate approvals will be required.

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

a. Schedule of Uses

Residential

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two-family (one existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)

Accessory:

Residential accessory uses

Lodging

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare units

Accessory:

- Resort accessory uses, including:
 - Rental of beach furniture
 - Boat rental (see condition #11 below)
 - Charter and tour boats (see condition #11 below)
 - Personal watercraft operations office (see condition #14 below)
 - Parasailing operations office (see condition #14 below)
 - Dock (for use by water taxi or water shuttle)
- Subordinate commercial uses (see LDC Section 34-3021; allocated within the floor areas provided below only)

Office

Principal:

NONE

Accessory:

- Administrative Office
- Home occupation (no outside help)
- Commercial accessory uses

Retail

Principal:

NONE

Accessory:

ATM

On-premises consumption of alcoholic beverages (see condition #10 below)

Marine

Principal:

NONE

Accessory:

Dock (for lease to non-occupants of the principal use)

Dock (for use by occupants of the principal use)

Civic

Principal:

Beach or bay access

Essential services

Essential service equipment

Park, neighborhood

b. Site Development Regulations

Maximum Floor Area Ratio:

As built. No expansion is permitted.

Total Floor Area of living units in **Captiva Villas** is limited to the existing **28,219 square feet**.

Total Floor Area of living units in **White Sands** is limited to **85,250 square feet**.

Commercial floor areas are limited to the allocations below.

No expansion to the two existing cottages on Lots 5 and 6, Gulf Shore Subdivision, is approved.

Maximum Building Height (feet):

As built. No expansion is permitted:

White Sands Building: 111.24 feet NGVD to bottom of roof structure.

Captiva Villas Building: 97 feet NGVD to bottom of roof structure

Maximum Building Height (stories):

As built. No expansion is permitted:

White Sands Building: 11 stories, not including roof and elevator/stairway structures as a story, and including the ground floor and the mezzanine as separate stories

Captiva Villas Building: 8 stories, not including roof and elevator/stairway structures as a story, and including the ground floor as a story

Minimum setbacks: **As built.** No new development of principal structures is authorized. Proposed accessory structures must meet the setbacks applicable accessory structures in the RM (Residential Multifamily) zoning district. Redevelopment under the "post-disaster" buildback provision of LDC Section 34-

3238(2) must (1) comply with the setbacks and property development regulations applicable to the RM zoning district at the time of development order approval; and (2) comply with the maximum building heights specified in this resolution except where allowed by LDC Section 34-3238(2)f; and (3) comply with the minimum open space and buffer requirements specified in this resolution and on the approved MCP, except where allowed by LDC Section 34-3238(2)f.

Redevelopment under the “pre-disaster” buildback provisions of LDC Section 34-3227 must be evaluated by the Town Council separately through the planned development rezoning process.

Commercial Use Floor Area allocations:

Bayside:

400 square feet (existing, see condition #12 below)
Administrative office
Retail store, small (limited to bait-and-tackle shop only)

Captiva Villas:

Not to exceed **3750 square feet** (existing) Restaurant
Not to exceed **900 square feet** (existing) Personal services
Not to exceed **750 square feet** (existing) Resort conference rooms

White Sands Villas:

Not to exceed **1700 square feet** (existing) Restaurant
Not to exceed **4700 square feet** (existing) Personal Services
Not to exceed **1000 square feet** (existing) Poolside bar
Not to exceed **1000 square feet** (existing) Retail
Not to exceed **3000 square feet** (existing) Resort conference rooms

3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.

4. Landscaping of the parking lot proposed on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, must comply with LDC Section 10-416 except to the extent permitted through any deviation explicitly approved in this Resolution. The siting of the proposed trash compactor on Lots 38 and 39, Block D, Island Shores Club Section is **DENIED/APPROVED**.

5. Landscaping of the subject property must remain in compliance with prior development orders, and must comply with the LDC except where deviations were specifically approved by prior development orders or in this Resolution. The approved development order for Captiva Villas and the Bayside is DOS2004-00099. The approved development order for White Sands is DOS2001-00133. Any future modifications to landscaping of the subject property must comply in all respects with the LDC and any other applicable Town ordinances at the time of permitting. This condition does not preclude future approval of a compliant alternative landscape betterment plan for the CPD provided it complies with LDC Section 10-419 and condition #4 above.

6. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.

7. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.

8. Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for the occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.

9. Subordinate commercial uses, including *restaurant, personal services, and retail store, small*, are permitted subject to the requirements of LDC Section 34-3021(b) and the floor area limitations of this resolution. Prior conditions limiting advertisement, marketing, and patronage of subordinate commercial uses using terms other than those of LDC Section 34-3021(b), specifically including but not limited to Condition 9 of Town Council Resolution 01-26 and Conditions 6 and 7 of Lee County Board of County Commissioners Resolution Z-95-017, are hereby repealed. Signage advertising the uses of *restaurant, personal services, and/or retail store, small* that is visible from Estero Boulevard or from the beach is prohibited. *Restaurant, personal services, and/or retail store, small* uses taking place on the subject property must not be held out to the public other than in connection with rental or ownership of living units within the subject property or rental of living units owned by the applicant located on property adjoining the subject property.

10. Consumption-on-premises of alcoholic beverages is limited to in-room self-service, the resort pool deck areas, the accessory restaurants, and "room service" operations. Consumption-on-premises of alcoholic beverages in outdoor areas is limited to the hours between 11:00 AM and 10:00 PM of each day. Any expansion of the areas for consumption-on-premises will require compliance with the Land Development Code provisions in effect at the time of the requested expansion.

11. Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number and/or size of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions. No live-aboard uses are permitted. Cruise ships are prohibited as provided by LDC Section 34-620(f).

12. No expansion to the existing "dockmaster" building on the Bayside parcel is approved. Use of this building is limited to accessory administrative offices for the management of water-related activities and for the leasing of boats and boat slips and management of water-related activities, a bait-and-tackle shop, and charter and tour boat ticket sales.

13. Lawfully nonconforming structures located seaward of the Coastal Construction Setback Line recorded in Plat Book 31, Pages 1-21, Public Records of Lee County, Florida, remain subject to the provisions of LDC Chapter 34, Article V.

14. The existing licensed personal watercraft operations office and the existing licensed parasailing operations office on the subject property remain lawfully nonconforming with regard to LDC Chapter 27. New or relocated personal watercraft operations office(s) and new or relocated parasailing operations office(s) must comply with all requirements of LDC Chapter 27 and may only be permitted if granted a special exception under LDC Section 34-88.

15. Any expansion of floor area or change of use to a use requiring more parking spaces requires an amendment to this planned development and its MCP through the public hearing process for zoning actions, and must comply with the parking requirements of the LDC in effect at the time of the hearing or seek a new deviation according to the standards then in effect.

16. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

17. All conditions and deviations of Resolution ADD2003-00160 (amending Pink Shell Bayside CPD) are repealed and the conditions and deviations provided herein shall be in full force and effect.

18. Conditions and deviations of Resolution ADD2003-00086 (amending Captiva Villas CPD (MPD converted to CPD by Fort Myers Beach Ordinance 03-03)) are modified as follows:

- a. Conditions 1 and 2 of administrative Resolution ADD2003-00086 are repealed.
- b. Conditions 3, 4, and 5 of Resolution ADD2003-00086 are repealed and the conditions provided herein shall be in full force and effect. The 1814-square-foot guest services/laundry area must remain a resort accessory use and is not approved for use as a commercial Laundromat.
- c. Condition 6 of Resolution ADD2003-00086, approving building elevations, is repealed.
- d. Condition 7 of Resolution ADD2003-00086, limiting future amendments, is repealed.
- e. Deviations, if any, in Resolution ADD2003-00086 are repealed and the deviations and conditions provided herein shall be in full force and effect.

19. Conditions and deviations of Town Council Resolution 01-26 (rezoning Captiva Villas from RM-2 to MPD) are modified as follows:

- a. Conditions 1 through 8 and Condition 10 of Resolution 01-26 are repealed.
- b. Condition 9 remains in full force and effect. Condition 9 states that the accessory commercial uses, restaurant, deli, and retail services, are to be clearly provided for the guests and staff of the Pink Shell resort only. Exterior signage advertising these services to the general public is prohibited.
- c. Condition 11 of Resolution 01-26 is repealed and the following condition shall be in full force and effect:

1. The dune restoration area must be located as shown in the approved DOS2004-00099.
 2. Plant species must consist of a mix of sea oats, beach panic grass, railroad vine, and beach sunflower, in lines planted at 1.5 feet on center
 3. Temporary rope-and-bollard fencing must be used to allow plants to become established whenever replanting is necessary.
 4. No more than one winding pathway, delineated with rope-and-bollard fencing, may provide beach access through the dune planting area.
 5. Planting and replanting of the dune planting area will be coordinated with the Town's shore protection activities, if pursued.
 6. The dune plan must include a storage area behind the dune line for beach furniture and other rental equipment.
- d. Deviations 1, 2, 3, and 4 of Resolution 01-26 are repealed.
- e. Deviation 5 of Resolution 01-26 is hereby repealed and the following condition shall be in full force and effect. Parking areas must comply with either LDC Section 34-2017(b).

20. Conditions and deviations of Town Council Resolution 01-21 (amending White Sands and Bayside PUD and CPD) are modified as follows:

- a. Conditions 1 and 2, and Conditions 6 through 11 inclusive, of Resolution 01-21 are repealed.
- b. Conditions 3, 4, and 5 of Resolution 01-21 are repealed and the following conditions shall be in full force and effect: parking areas must comply with either LDC Section 34-2017(a) or LDC Section 34-2017(b).

21. Conditions and deviations of Town Council Resolution 00-07, as corrected by Town Council Resolution 00-07A, (amending the Pink Shell Gulf side (aka White Sands) PUD and amending Pink Shell Bayside CPD) are modified as follows:

- a. Conditions 1 through 4 inclusive, and conditions 6, 8, and 9 of Resolution 00-07 are repealed.
- b. Condition 5 of Resolution 00-07 is repealed and replaced by the following condition: surface water management on the Bayside parcel must comply with the requirements of LDC Chapter 10 and any other applicable requirements of the South Florida Water Management District at the time of permitting.
- c. Condition 7 of Resolution 00-07 is repealed and replaced by the following condition: shoreline stabilization along the shore of San Carlos Bay must comply with applicable requirements of LDC Chapter 26 and all applicable federal and state regulations.
- d. Condition 10 of Resolution 00-07 continues in force as restated with modifications, as follows:
 1. The dune restoration area must be located as shown in the approved DOS2001-00133.
 2. Plant species must consist of a mix of sea oats, beach panic grass, railroad vine, and beach sunflower in lines planted at 1.5 feet on center.
 3. The former swimming pool has been removed. Except in accordance with the LDC, structures may not be constructed in the EC zoning district.
 4. Temporary rope-and-bollard fencing must be used to allow plants to become established whenever replanting is necessary.

5. No more than two winding pathways delineated with rope-and-bollard fences may provide beach access, one adjacent to the northwesterly line of Lot 36 and one adjacent to the southeasterly line of Lot 35, both in Island Shores Unit 4 Subdivision.
6. Planting and replanting of the dune restoration area will be coordinated with the Town's shore protection activities, if pursued.

22. Town Council Resolution 99-07 continues in force in accordance with the Fort Myers Beach Comprehensive Plan and Land Development Code. Lot 37, Block D, Island Shores Club Section Subdivision, as recorded in Plat Book 9, Page 41, Public Records of Lee County, Florida, (aka Abaco Beach Villas) is not included in the subject property or this approval.

23. Administrative Amendment PUD98-029 (summarizing existing development and remaining development rights as of 1998) has been rendered obsolete by subsequent rezoning and subsequent development, and all conditions and deviations therein are repealed.

24. Conditions and deviations of Administrative Amendment PUD95-041 (severing Pink Shell Bayside from the gulf side PUD) are repealed.

25. Conditions and deviations of Lee County Board of County Commissioners Resolution Z-95-017 (rezoning Pink Shell Bayside property from RM-2 and PUD to CPD) are modified as follows:

1. Conditions 1 through 5 and Conditions 8 and 9 (inclusive) of Resolution Z-95-017 are repealed.
2. Condition 6 is modified to conform to the uses and square footages set forth in Condition 2 of this Resolution 2009-13 (set forth on pages 3, 4 and 5 above) but otherwise continues in full force and effect.
3. Condition 7 is modified as follows: (a) signage must be prominently displayed indicating that commercial uses are for hotel/motel guests only; (b) advertising of the commercial uses is prohibited except in connection with advertising for the hotel/motel operation and such advertising must reasonably indicate that such uses are for guests of the hotel/motel only; and (c) outdoor entertainment must be limited to the hours between 7 am and 10 pm; and (d) the restaurant condition is repealed as being moot.
4. Deviations 1 through 3 (inclusive) and 5 through 8 (inclusive) of Resolution Z-95-017 are repealed.
5. The previous denial of requested Deviation 4 of Resolution Z-95-017 remains in full force and effect.

26. Conditions and deviations of Lee County Board of County Commissioners Resolution Z-93-057 (amending Pink Shell PUD for Phase III, now known as Estero Island Beach Villas Condominium) remain in force with respect to Estero Island Beach Villas Condominium, which did not join in this application, but the conditions and deviations are superseded by the conditions and deviations provided herein insofar as they affect any part of the subject property.

27. Conditions and deviations of Lee County administrative Resolution PUD93-014, as corrected by Resolution PUD93-014A (amending Pink Shell PUD for Phases II, III, and IV) remain in force with respect to Estero Island Beach Villas Condominium, which did not join in this application, but the conditions and deviations are superseded by the conditions and deviations provided herein insofar as they affect any part of the subject property.

28. Conditions and deviations of Lee County administrative Resolution PUD91-010, as corrected by Resolution PUD91-010A, (amending Pink Shell PUD) remain in force with respect to Estero Island Beach Villas Condominium, which did not join in this application, but the conditions and deviations of the aforesaid Resolution are repealed and replaced by other conditions and deviations set forth in this Resolution insofar as they affect any part of the subject property.

29. Conditions and deviations of Lee County Board of County Commissioners Resolution ZAB-84-196, as corrected by Resolution ZAB-84-196A (approving final PUD plans for phases II through V of Pink Shell PUD) remain in force to the extent they affect property other than the subject property. Conditions 1, 3, and 4 of Resolution ZAB-84-196 are repealed. Condition 2 of Resolution ZAB-84-196 continues in force with respect to the subject property as restated with the following modification:

The six parking spaces provided by the developer on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, are for the use of Pink Shell Vacation Villas Condominium. A minimum of six parking spaces must continue to be provided by the developer on Lots 38 and 39, Block D, Island Shores Club Section Subdivision for the use of Pink Shell Vacation Villas Condominium.

30. Conditions and deviations of Lee County Board of County Commissioners Resolution ZAB-83-353 (approving final PUD plan for Phase I of Pink Shell PUD) remain in force to the extent they affect property other than the subject property. Conditions and deviations of Resolution ZAB-83-353 are repealed and the conditions and deviations provided herein shall be in effect insofar as they affect any part of the subject property.

31. Conditions and deviations of Lee County Board of County Commissioners Resolution Z-82-170 (approving rezoning from RM-2 to PUD for the Pink Shell PUD) remain in force to the extent that they affect property other than the subject property. Conditions and deviations of Resolution Z-82-170 are repealed and by the conditions and deviations provided herein shall be in full force and effect in their application to any part of the subject property.

B. DEVIATIONS

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package has been withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-of-way for access to the proposed trash compacter. Town Council APPROVES deviation #2/APPROVES deviation #2 as modified/DENIES deviation #2.**

Deviation #3. Deviation from LDC Section 34-2020 to allow 265 parking spaces instead of 316 spaces for the uses specified in condition #2 above advertised and made available to the public in accordance with condition #9 above. The applicant withdrew the request to modify prior

conditions as set forth in condition #9 above on September 25, 2009. **The Town Council APPROVES/DENIES** deviation #3.

FINDINGS AND CONCLUSIONS

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

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES/DOES NOT** comply with:
 - a. The Town Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS/IS NOT** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE/ARE NOT** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE/ARE NOT** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. The proposed use **MEETS/DOES NOT MEET** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and
Comprehensive Plan Policy 4-C-3 regarding the commercial locations.
6. As to the schedule of deviations, as conditioned:
 - A. Regarding requested Deviation #1, the Town Council **acknowledges the withdrawal of this request by the applicant on September 25, 2009.**
 - B. Regarding requested Deviation #2, as modified, Town Council finds that, as modified above:
 1. Deviation #2, **does/does not** enhance the achievement of the objectives of the planned development; and
 2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will/will not** be preserved and promoted by Deviation #2 ; and
 3. Deviation #2, **does/does not operate** to the benefit, **and may/may not operate** to the detriment, of the public interest; and
 4. Deviation #2, **is/is not** consistent with the Fort Myers Beach Comprehensive Plan.

Regarding requested Deviation #3, Town Council finds that:

1. Deviation #3 **does/does not enhance** the achievement of the objectives of the planned development; and
2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will/will not** be preserved and promoted by Deviation #3; and
3. Deviation #3 **does/does not operate** to the benefit, and **may/may not operate** to the detriment, of the public interest; and
4. Deviation #3 **is/is not consistent** with the Fort Myers Beach Comprehensive Plan.

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

Larry Kiker, Mayor
 Tom Babcock
 Bob Raymond

Herb Acken, Vice Mayor
 Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF JANUARY, 2010, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
 Larry Kiker, Mayor

By: _____
 Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: _____
 Anne Dalton, Esquire, Town Attorney

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 09-XX
GULFSIDE PARCELS

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, with authorization of at least 75 percent of the unit owners of White Sand Villas, a condominium, and at least 75 percent of the unit owners of Captiva Villas, a condominium, as required by Land Development Code (LDC) Section 34-201, (together, "Applicant") has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for White Sand CPD and Captiva Villas CPD to approve a revised master concept plan (MCP) and to make certain changes to existing uses and modifications to existing development; and

WHEREAS, the subject property is located at 190 Estero Boulevard and 200 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340, 24-46-23-W1-04000.00CE, and 24-46-23-W1-04100.00CE, with the legal description set forth in Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Allow for possible relocation of pedestrian beach access on Lot 36, Block D, Island Shores Unit 4 Subdivision, and Lot 37, Block F, Island Shores Club Section Subdivision (required by prior zoning conditions), to the northwesterly side of Lot 38, Block F, Island Shores Club Section Subdivision, as shown on the proposed MCP.
2. ~~Allow for dedication of 5 feet of right-of-way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.~~
3. ~~Make alterations to the landscaping of the right-of-way buffer and parking lot and open space areas on gulf side parcels to allow for possible right-of-way dedication and placement of stormwater management areas.~~
4. ~~Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to "guests of the Pink Shell Resort only."~~
5. ~~Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
6. ~~Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
7. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which time it was continued to December 7, 2009, and then further continued to December 21, 2009, and further continued to January 19, 2010, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES/DENIES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL/DENIAL of () conditions and DENIAL OF () condition(s)**. The Town Council acknowledges that the previously requested deviations have been **WITHDRAWN**.

A. CONDITIONS

1. Development must be consistent with the MCP titled "Pink Shell CPD Master Concept Plan" for cases DCI2006-0001 and DCI2006-0002, stamped received February 10, 2009, except as specifically modified by conditions or deviations herein. In accordance with LDC Section 34-216(b)(4), the MCP must be updated to reflect the changes approved and required by Town Council, and this condition may change to reflect such new submittal date of the MCP. Specifically the MCP must be updated to reflect the external boundary of the property subject to these amendments and must not include adjacent properties whose owners did not join in the application, and must include only such portions of the amended request as are approved by the Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.

4. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.
5. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.
6. Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for the occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.
7. Approval of this amendment does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting.

B. DEVIATIONS

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package has been withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-of-way for access to the proposed trash compacter**, as specifically addressed in Town Resolution 09-XX, which addresses "the Bayside Parcels". Town Council **APPROVES deviation #2/APPROVES deviation #2 as modified/DENIES deviation #2.**

Deviation #3. The applicant withdrew the request to modify certain prior conditions on September 25, 2009. Deviation #3 to reduce the required number of parking spaces is therefore unnecessary. **The Town Council APPROVES/DENIES deviation #3.**

FINDINGS AND CONCLUSIONS

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

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES/DOES NOT** comply with:
 - a. The Town Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS/IS NOT** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE/ARE NOT** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE/ARE NOT** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. The proposed use or mix of uses **MEETS/DOES NOT MEET** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and
 Comprehensive Plan Policy 4-C-3 regarding commercial locations.
6. As to the schedule of deviations, as conditioned:
 - A. Regarding requested Deviation #1, the Town Council **acknowledges the withdrawal of this request by the applicant on September 25, 2009.**
 - B. Regarding Deviation #2, the Town Council acknowledges that Deviation #2 does not affect the subject property.
 - C. Regarding requested Deviation #3, Town Council finds that:
 1. Deviation #3 **does/does not enhance** the achievement of the objectives of the planned development; and
 2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will/will not** be preserved and promoted by Deviation #3; and
 3. Deviation #3 **does/does not operate** to the benefit, and **may/may not operate** to the detriment, of the public interest; and
 4. Deviation #3 **is/is not consistent** with the Fort Myers Beach Comprehensive Plan.

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

Larry Kiker, Mayor
 Tom Babcock
 Bob Raymond

Herb Acken, Vice Mayor
 Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF JANUARY, 2010, BY THE
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: _____
Anne Dalton, Esquire, Town Attorney

DRAFT - GULF SIDE

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 09-XX
BAYSIDE PARCELS

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, ("Applicant") has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for Bayside CPD to approve a revised master concept plan (MCP) and to make certain changes including the addition of certain accessory uses to the MCP; and

WHEREAS, the subject property is located at 171-191 Estero Boulevard, 251-281 Estero Boulevard, 275 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0320, and 24-46-23-W1-00700.0290, with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot as shown on proposed MCP.
2. Allow existing boat ramp on Bayside parcel to remain, with pedestrian walkway rerouted, as shown on proposed MCP.
3. ~~Allow for dedication of 5 feet of right-of-way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.~~
4. ~~Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to "guests of the Pink Shell Resort only."~~
5. ~~Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
6. ~~Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
7. Add a trash compactor to the MCP on Lots 38 and 39, Block D, Island Shores Club Section Subdivision (adjacent to Bowditch Point Regional Park).
8. Add 8 valet parking spaces at the northwesterly end of the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end of the parking lot on the Bayside parcel.
9. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which time it was continued to December 7, 2009, December 21, 2009, and January 19, 2010, at which point the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons.

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

The Town Council **APPROVES/DENIES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL/DENIAL of (___) conditions and DENIAL OF (___) condition(s)**. The Town Council **APPROVES/DENIES Deviation #2 (if modified as recommended)**. The Town Council **APPROVES/DENIES Deviation #3**. All approvals and denials are set forth with specificity below.

A. CONDITIONS

1. Development must be consistent with the MCP titled "Pink Shell CPD Master Concept Plan" for cases DCI2006-0001 and DCI2006-0002, stamped received February 10, 2009, except as specifically modified by conditions or deviations herein. In accordance with LDC Section 34-216(b)(4), the MCP must be updated to reflect the changes approved and required by Town Council, and this condition may change to reflect such new submittal date of the MCP. Specifically the MCP must be updated to reflect the external boundary of the property subject to these amendments and must not include adjacent properties whose owners did not join in the application, and must only include such portions of the amended request as are approved by Town Council. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.
4. Landscaping of the parking lot proposed on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, must comply with LDC Section 10-416 except to the extent permitted

through any deviation explicitly approved in this Resolution. The siting of the proposed trash compactor on Lots 38 and 39, Block D, Island Shores Club Section is **DENIED/APPROVED**.

5. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.

6. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.

7. Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. No live-aboard uses are permitted. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number and/or size of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.

8. No expansion to the existing "dockmaster" building on the Bayside parcel is approved. Use of this building is limited to accessory administrative offices for the leasing of boats and boat slips and management of water-related activities, a bait-and-tackle shop, and charter and tour boat ticket sales.

9. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

B. DEVIATIONS

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package has been withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-of-way for access to the**

proposed trash compacter. Town Council APPROVES deviation #2/APPROVES deviation #2 as modified/DENIES deviation #2.

Deviation #3. The applicant withdrew the request to modify certain prior conditions on September 25, 2009. Deviation #3 to reduce the required number of parking spaces is therefore unnecessary. **The Town Council APPROVES/DENIES deviation #3.**

FINDINGS AND CONCLUSIONS

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

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES/DOES NOT** comply with:
 - a. The Town Comprehensive Plan;
 - b. LDC Chapter 34;
 - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS/IS NOT** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE/ARE NOT** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE/ARE NOT** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. The proposed use **MEETS/DOES NOT MEET** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and
Comprehensive Plan Policy 4-C-3 regarding the commercial locations.
6. As to the schedule of deviations, as conditioned:
 - A. Regarding requested Deviation #1, the Town Council **acknowledges the withdrawal of this request by the applicant on September 25, 2009.**
 - B. Regarding requested Deviation #2, as modified, Town Council finds that, as modified above:
 1. Deviation #2, **does/does not** enhance the achievement of the objectives of the planned development; and
 2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will/will not** be preserved and promoted by Deviation #2 ; and

3. Deviation #2, **does/does not operate** to the benefit, **and may/may not operate** to the detriment, of the public interest; and
4. Deviation #2, **is/is not** consistent with the Fort Myers Beach Comprehensive Plan.

Regarding requested Deviation #3, Town Council finds that:

1. Deviation #3 **does/does not enhance** the achievement of the objectives of the planned development; and
2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will/will not** be preserved and promoted by Deviation #3; and
3. Deviation #3 **does/does not operate** to the benefit, and **may/may not operate** to the detriment, of the public interest; and
4. Deviation #3 **is/is not consistent** with the Fort Myers Beach Comprehensive Plan.

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

Larry Kiker, Mayor
Tom Babcock
Bob Raymond

Herb Acken, Vice Mayor
Jo List

DULY PASSED AND ADOPTED THIS ____ DAY OF JANUARY, 2010, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

ATTEST:

By: _____
Larry Kiker, Mayor

By: _____
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: _____
Anne Dalton, Esquire, Town Attorney

LEGEND

-  **BB**
-  **CB**
-  **CF**
-  **GM**
-  **GO**
-  **CPD**
-  **CR**
-  **DOWNTOWN**
-  **EC**
-  **IN**
-  **RC**
-  **RM**
-  **RPD**
-  **RS**
-  **SANTINI**
-  **SANTOS**
-  **VILLAGE**
-  Individual approvals (see notes in FMB Resolution 04-16)
-  Lots and parcels
-  Wetlands (from comprehensive plan)
-  Platted Overlay (from comprehensive plan)
-  Town boundary

OFFICIAL ZONING MAP

Town of Fort Myers Beach

This zoning map represents the official zoning map plus all rezonings, special exceptions, variances, and administrative amendments approved as of April 1, 2004

Key numbers refer to individual zoning resolutions; see Fort Myers Beach Resolution No. 04-16 for details



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Mark A. Ebelini
Thomas B. Hart
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Aaron A. Haak++

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and Land Use Planning

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** Board Certified Real Estate Lawyer
+ Board Certified Business Litigation Lawyer
++ Board Certified Construction Lawyer

muhle@knott-law.com

M E M O R A N D U M

TO: Fort Myers Beach Town Council

FROM: Matt Uhle

DATE: January 6, 2010

RE: Pink Shell Rezoning

At the hearing on December 7th, I advised the Council that my clients, Susan and Peter Lisich and Pink Shell Vacation Villas Condominium Association, had eight issues with the Pink Shell zoning application. Four of these issues pertain solely to language in the draft resolution and thus cannot be fully addressed until the new resolutions have been drafted and distributed. As a result, I expect to provide you with a second memo discussing these issues at a later date. The following four issues, however, are squarely presented by the applicant's MCP, and can therefore be addressed without the new resolutions:

ISSUE 1: Do not permit the conversion of open space areas (including the former tennis court) shown on the existing approved MCP into permanent parking areas.

RATIONALE: The tennis court was required to meet the project's open space requirements in 1995. The tennis court was converted to a parking lot on the basis of a temporary permit which was inconsistent with the approved MCP. The conversion has created unacceptable visual, noise, and traffic impacts within the neighborhood. The additional parking requested by the applicant is unnecessary if the resort is not open to the public according to the calculation on the MCP. The applicant previously committed to maintain the bayfront portion of the project in an attractive condition in exchange for additional units and height on the gulfside; the amendment consequently would permit the applicant to enjoy the benefits of the previous bargain, while ignoring its obligations.

REQUESTED ACTION: Add a condition requiring the former tennis court area to be used as open space and prohibit the conversion of any other open space areas to parking. Delete any reference to the parking lot in the approved resolution.

ISSUE 2: Do not permit the compactor at the proposed location.

RATIONALE: The proposed location is highly visible from the Vacation Villas building and the Lisich parcel and will create unacceptable noise, odor, visual, and traffic impacts.

REQUESTED ACTION: Deny the applicant's request for the compactor at this location or any other location abutting a parcel under different ownership.

ISSUE 3: Require the applicant to remove the boat ramp from the MCP.

RATIONALE: The approved MCP has not shown the boat ramp since 2000. It presents an obstacle to the use of the interpretive walkway. The continuing existence of the ramp in its current form invites public use, which is incompatible with the residential neighborhood, and is inconsistent with previous agreements to maintain an open and attractive bayfront in exchange for additional units and height on the gulfside.

REQUESTED ACTION: Add a condition requiring the applicant to revise the MCP to eliminate the ramp.

ISSUE 4: Protect existing landscaping southeast of the Lisich parcel.

RATIONALE: The previously approved Pink Shell plan shows landscaping on property abutting the Lisich lot. The trees were installed and are thriving. The new plan does not show any trees at this location.

REQUESTED ACTION: Add a condition requiring a revision to the MCP to show the above-described existing landscaping.

MDU/zw

SUMMARY of TESTIMONY BEFORE TOWN COUNCIL on DECEMBER 7, 2009

Respectfully submitted by John Boucher, co-owner Estero Island Beach Villas Unit 506

1 A & B. PARKING

Applicant proposes destroying BAYSIDE OPEN SPACE and BAYSIDE VIEW CORRIDOR to create additional parking spaces. It has been clearly shown that applicant has chosen NOT to use the 60+ Valet parking spaces CURRENTLY AVAILABLE. RECOMMEND DENIAL

1 C. ADDITION of ENTRANCE GATES at PARKING LOT ENTRANCES

I agree with staff report that suggests the addition of gates will increase pressure on the parking lots of neighboring properties. RECOMMEND DENIAL

2. BOAT RAMP

Same applicant in proposal to previous Town Council agreed to remove the boat ramp to accommodate a continuous interpretive walkway. Ramp is still there and walkway has never been completed.

APPLICANT SHOULD COMPLY WITH PREVIOUS AGREEMENTS MADE WITH THIS TOWN and COUNTY

3. TRASH COMPACTOR

Applicants request to place a trash compactor in a neighbor's front yard clearly demonstrates applicants disrespect and insensitivity for their neighbors.

Trash compactor needs to be placed within Resort property, out of sight, smell and beyond compacting noise from neighboring properties, PERIOD.

4. PEDESTRIAN BEACH ACCESS RELOCATION

Apparently the current beach access path divides two Pink Shell resort water features. Relocating the beach access seems like a reasonable request. Defer to Town and County Planners for compliance.

5. ADD EMPLOYEE HOUSING

This request mainly impacts the two cottages on Gulfshore Court. Staff report clearly explains occupancy restrictions. Town Council should not approve this request without the involvement of CODE ENFORCEMENT to ensure that occupancy limits are not exceeded.

6. EXISTING DOCKS

Town Council needs to investigate, and resolve, how 30 existing docks magically increased to 41 dock spaces on the latest Pink Shell application.