RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2010-02
SMALL-SCALE AMENDMENT TO
TOWN COMPREHENSIVE PLAN FUTURE LAND USE MAP

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency (LPA) is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the Town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March_____, 2010 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

WHEREAS, the aforesaid Ordinance, if passed, would amend the Town Comprehensive Plan Future Land Use Map (FLUM) to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM, as is more fully set forth in the draft Ordinance; and

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends/does not recommend** that Town Council approve and adopt the proposed Town Ordinance to amend the Comprehensive Plan Future Land Use Map (FLUM) so as to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM, and **recommends** the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment to the Town Comprehensive Plan **DOES/DOES NOT** qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:

a. the proposed amendment **DOES/DOES NOT** involve a use of 10 acres or fewer; and

b. the cumulative annual effect of the acreage for all small scale developments adopted by the Town of Fort Myers Beach **WILL/WILL NOT** exceed a maximum of 120 acres as provided in F.S. 163.3187(1)(c)(1)(a)(I); and

c. the proposed FLUM amendment **DOES/DOES NOT** involve the same property granted a change within the prior 12 months; and

d. the proposed amendment **DOES/DOES NOT** involve the same owner's property within 200 feet of property granted a change within the prior 12 months; and

e. The proposed amendment **DOES/DOES NOT** involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, and **DOES/DOES NOT** only propose a land use change to the future land use map for a site-specific small scale development activity; and

f. The property that is the subject of the proposed amendment **IS/IS NOT** located within an area of critical state concern; and

g. If the proposed amendment involves a residential land use, the residential land use **DOES/DOES NOT HAVE** a density of 10 units or less per acre or the proposed future land use category **DOES/DOES NOT** allow a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category.

h. The proposed small scale amendment **DOESNDOES NOT** involve a site which is designated by the Governor as a rural area of critical economic concern.

2. It **IS/IS NOT** in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change **IS/IS NOT** necessary to provide for orderly future growth of the community, for the following reasons:

a. The proposed amendment will likely have **POSITIVE/NEGATIVE/NO** impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: _____; and

b. _____; and
(etc. - as many as needed)

3. It is further recommended that, in accordance with the requirements of Section 163.3187, Florida Statutes, if this proposed change to the FLUM is made by the Town Council, that the Town Council direct the Town staff to send copies of the notice of hearings and ordinance containing the amendment to the Town Future Land Use Map to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

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

Joanne Shamp, Chair	Bill Van Duzer, Vice Chair	Rochelle Kay
Chuck Moorefield	Carleton Ryffel	John Kakatsch

DULY PASSED AND ADOPTED THIS ____ day of March, 2010.

LPA of the Town of Fort Myers Beach

By: _____
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By:_____
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: _____
Michelle Mayher, Town Clerk

DRAFT

ORDINANCE NO. 10-xx

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING FOR A SMALL-SCALE AMENDMENT TO THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO RECLASSIFY CERTAIN PROPERTY FROM THE MIXED RESIDENTIAL CATEGORY TO THE PEDESTRIAN COMMERCIAL CATEGORY ON THE FUTURE LAND USE MAP; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

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

WHEREAS, Section 163.3187, Florida Statutes, provide that amendments to the Town of Fort Myers Beach Comprehensive Plan (Comp Plan) which are directly related to proposed small scale development activities may approved without regard to statutory limits on the frequency of consideration of amendments to such Comp Plan; and

WHEREAS, a small-scale development amendment may be adopted only under the conditions set forth in Section 163.3187, Florida Statutes and other provisions of State and local law; and

WHEREAS, James F. Purtell, Patrick Purtell, and Fred Paine have applied to the Town for an amendment to the Comp Plan Future Land Use Map (FLUM) to reclassify property located at 821 Estero Boulevard and 831 Estero Boulevard (the subject property) from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM category, with the legal description, STRAP number and other relevant information regarding the subject property and proposed amendment to the FLUM being attached to this Ordinance as Exhibit A and hereby incorporated by reference; and

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on _____, 2010, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2010-XX which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida statute, this ordinance was introduced before Town Council on _____, 2010 and the Town Council conducted a duly noticed hearing on this ordinance on _____, 2010, at which time the Town Council considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The above "whereas" clauses are incorporated herein as though fully set forth.

SECTION 2. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER APPLICATION MEETS CRITERIA TO BE CONSIDERED FOR A SMALL-SCALE AMENDMENT. In accordance with the requirements of Section 163.187(c), Florida Statutes, the Town Council makes the following findings of fact:

(1) the proposed amendment **DOES/DOES NOT** involve a use of 10 acres or fewer;
(2) the cumulative annual effect of the acreage of all small scale amendments **DOES/DOES NOT** exceed certain the statutory threshold of 80 acres;
(3) the proposed amendment **DOES/DOES NOT** involve the same property granted a change within the previous 12 months;
(4) the proposed amendment **DOES/DOES NOT** involve the same owner's property within 200 feet of a property granted a change within the previous 12 months;
(5) the proposed amendment **DOES/DOES NOT** involve a text change to the goals, policies and objectives of the Town's Comprehensive Plan and **DOES/DOES NOT** only involve a change to the FLUM;
(6) the property **IS/IS NOT** located in an "area of critical state concern";
(7) any proposed residential use involved **DOES/DOES NOT** have a density of 10 units or less per acre, or the proposed category **DOES/DOES NOT** allow a maximum density of the same or less than is allowed by the current category.
(8) Applicants' application **DOES/DOES NOT** meet the statutory requirements to be considered for a small-scale amendment.

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER THIS. The Town Council finds that the proposed FLUM amendment **IS/IS NOT** clearly in the best interest of the health, safety and welfare of the Town's residents, businesspersons and property owners and such change **IS/IS NOT** necessary to provide for orderly future growth of the community, for the following reasons:

(1). The proposed amendment will likely have **POSITIVE/NEGATIVE/NO** impact on affected traffic, utilities, other services, and future capital expenditures, and the following additional elements: _____; and
(2) _____; and
(3) _____
(etc. - as many as needed)

SECTION 4. AMENDMENT OF COMPREHENSIVE PLAN FUTURE LAND USE MAP. The Council hereby **GRANTS/DENIES** applicants' request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to send copies of the public notice for the Council hearing as well as a copy of the

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amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

SECTION 6. EFFECTIVE DATE. In accordance with the requirements of Section 163.3187, Florida Statutes, this ordinance shall become effective until 31 days after adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining this Ordinance is in compliance.

SECTION 7. CONFLICTS. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

SECTION 8. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

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

Larry Kiker, Mayor	___	Bob Raymond, Vice Mayor	___
Tom Babcock	___	Jo List	___
Alan Mandel	___		

DULY PASSED AND ENACTED this ____ day of ____, 2010.

ATTEST: TOWN OF FORT MYERS BEACH

_____ BY: _____

Michelle D. Mayher, Town Clerk Larry Kiker, Mayor

Approved as to legal form by:

_____

Anne Dalton, Esquire
Town Attorney

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Anne Dalton, Esquire
2044 Bayside Parkway
Fort Myers, Florida 33901
(239) 337-7900 (Voice)

MEMORANDUM

To: Chair, Vice Chair, Members, Local Planning Agency

CC: Town Manager, Town Clerk, Community Development Director

Date: March 15, 2010

Subject: Small Scale Amendment to Town Comprehensive Plan Future Land Use Map/Private Party Request

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The process for a privately-initiated request for a small-scale amendment to the Town's Comprehensive Plan Future Land Use Map is primarily controlled by Florida Statute. The LPA reviews such requests pursuant to the Town LDC.

The first step is for the LPA to review and make recommendations as to whether the request meets the statutory requirements to be considered as a small-scale amendment. Attached for your reference is a truncated copy of Section 163.3187, which sets out the mandatory findings. These findings have also been incorporated into the LPA resolution for LPA consideration of this matter, in our standard "does/does not" format. However, if the LPA wishes to incorporate additional findings, of course that is your discretion. In addition, if you would prefer a full copy of Section 163.3187, please advise.

Assuming that the LPA recommends a finding that the request does meet the statutory requirements, the next step is to determine whether this request meets the criteria for approval by the Town. Attached for your reference is a somewhat lengthy Florida Supreme Court case, *COASTAL DEVELOPMENT OF NORTH FLORIDA, INC., v. CITY OF JACKSONVILLE BEACH,* 788 So. 2d 204 (Fl. 2001). It contains an interesting discussion of whether a small-scale amendment is in the nature of a legislative or a quasi-judicial proceeding, but I am attaching it for the language contained on page 14. This language (which is outlined in yellow highlighting) sets out the required elements of substantive review and I would urge you to review it carefully prior to the hearing. This language has also been incorporated into the draft resolution for your consideration, subject to any appropriate modifications by you at hearing.

As always, please let me know if you have any questions.

Thank you.

ATTACHMENT ONE: FLORIDA STATUTE 163.3187

Chapter 163. Intergovernmental Programs

Part II. Growth Policy; County and Municipal Planning; Land Development Regulation

163.3187. Amendment of adopted comprehensive plan

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

…..

(c) Any local government comprehensive plan amendments directly related to proposed small scale development activities may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. **A small scale development amendment may be adopted only under the following conditions:**

1. The proposed amendment involves a use of 10 acres or fewer and:

a. The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government shall not exceed:

(I) A maximum of 120 acres in a local government that contains areas specifically designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e); however, amendments under this paragraph may be applied to no more than 60 acres annually of property outside the designated areas listed in this sub-sub-subparagraph. Amendments adopted pursuant to paragraph (k) shall not be counted toward the acreage limitations for small scale amendments under this paragraph.

(II) A maximum of 80 acres in a local government that does not contain any of the designated areas set forth in sub-sub-

subparagraph (I).

(III) A maximum of 120 acres in a county established pursuant to s. 9, Art. VIII of the State Constitution.

b. The proposed amendment does not involve the same property granted a change within the prior 12 months.

c. The proposed amendment does not involve the same owner's property within 200 feet of property granted a change within the prior 12 months.

d. The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity.

e. The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1). Such amendment is not subject to the density limitations of sub-subparagraph f., and shall be reviewed by the state land planning agency for consistency with the principles for guiding development applicable to the area of critical state concern where the amendment is located and shall not become effective until a final order is issued under s. 380.05(6).

f. If the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre or the proposed future land use category allows a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category, except that this limitation does not apply to small scale amendments involving the construction of affordable housing units meeting the criteria of s. 420.0004(3) on property which will be the subject of a land use restriction agreement, or small scale amendments described in sub-

sub-subparagraph a.(I) that are designated in the local comprehensive plan for urban infill, urban redevelopment, or downtown revitalization as defined in s. 163.3164, urban infill and redevelopment areas designated under s. 163.2517, transportation concurrency exception areas approved pursuant to s. 163.3180(5), or regional activity centers and urban central business districts approved pursuant to s. 380.06(2)(e).

2. a. A local government that proposes to consider a plan amendment pursuant to this paragraph is not required to comply with the procedures and public notice requirements of s. 163.3184(15)(c) for such plan amendments if the local government complies with the provisions in s. 125.66(4)(a) for a county or in s. 166.041(3)(c) for a municipality. If a request for a plan amendment under this paragraph is initiated by other than the local government, public notice is required.

b. The local government shall send copies of the notice and amendment to the state land planning agency, the regional planning council, and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

3. Small scale development amendments adopted pursuant to this paragraph require only one public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(7), and are not subject to the requirements of s. 163.3184(3)-(6) unless the local government elects to have them subject to those requirements.

4. If the small scale development amendment involves a site within an area that is designated by the Governor as a rural area of critical economic concern under s. 288.0656(7) for the duration of such designation, the 10-acre limit listed in subparagraph 1. shall be increased by 100 percent to 20 acres. The local government approving the small scale plan amendment shall certify to the Office of Tourism, Trade, and Economic Development that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), and the property subject

to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

….

(2) Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to s. 163.3177(2). Corrections, updates, or modifications of current costs which were set out as part of the comprehensive plan shall not, for the purposes of this act, be deemed to be amendments.

(3)(a) The state land planning agency shall not review or issue a notice of intent for small scale development amendments which satisfy the requirements of paragraph (1)(c). Any affected person may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57 to request a hearing to challenge the compliance of a small scale development amendment with this act within 30 days following the local government's adoption of the amendment, shall serve a copy of the petition on the local government, and shall furnish a copy to the state land planning agency. An administrative law judge shall hold a hearing in the affected jurisdiction not less than 30 days nor more than 60 days following the filing of a petition and the assignment of an administrative law judge. The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act. In any proceeding initiated pursuant to this subsection, the state land planning agency may intervene.

(b)1. If the administrative law judge recommends that the small scale development amendment be found not in compliance, the administrative law judge shall submit the recommended order to the Administration Commission for final agency action. If the administrative law judge recommends that the small scale development amendment be found in compliance, the administrative law judge shall submit the recommended order to the state land planning agency.

2. If the state land planning agency determines that the plan amendment is not in compliance, the agency shall submit, within 30 days following its receipt, the recommended order to the Administration Commission for final agency action. If the state land planning agency determines that the plan amendment is in compliance, the agency shall enter a final order within 30 days following its receipt of the recommended order.

(c) Small scale development amendments shall not become effective until 31 days after adoption. If challenged within 30 days after adoption, small scale development amendments shall not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining the adopted small scale development amendment is in compliance.

….

(5) Nothing in this part is intended to prohibit or limit the authority of local governments to require that a person requesting an amendment pay some or all of the cost of public notice.

ATTACHMENT TWO:

FLORIDA SUPREME COURT:
COASTAL DEVELOPMENT OF NORTH FLORIDA V. CITY OF JACKSONVILLE

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Supreme Court of Florida.
COASTAL DEVELOPMENT OF NORTH FLORIDA, INC., etc., et al., Petitioners,
v.
CITY OF JACKSONVILLE BEACH, Respondent.
No. SC95686.

April 12, 2001.

Developers filed petition for writ of certiorari to review city's denial of developers' application for small-scale development amendment to city's comprehensive plan. After trial court granted petition and quashed city's denial of application, city sought certiorari review. The District Court of Appeal, Webster, J., 730 So.2d 792, reversed and remanded, finding that city's action was legislative, and certified question. The Supreme Court, Wells, C.J., addressing a novel issue, held that small-scale development amendments are legislative decisions which are subject to fairly debatable standard of review.

Approved and remanded with directions.

West Headnotes

[1] Zoning and Planning 414 ⚷1620

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1620 k. In general. Most Cited Cases
(Formerly 414k601)
Fairly debatable standard of review is highly deferential standard requiring approval of land use planning action if reasonable persons could differ as to its propriety.

[2] Zoning and Planning 414 ⚷1623

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1623 k. Modification or amendment; rezoning. Most Cited

Cases
(Formerly 414k604)
Small-scale development amendments are legislative decisions which are subject to fairly debatable standard of review. West's F.S.A. § 163.3187(1)(c).

[3] Zoning and Planning 414 ⚷1573

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k1572 Nature and Form of Remedy
414k1573 k. In general. Most Cited Cases
(Formerly 414k563.1)
Challenge to local government's decision on small-scale development amendment may be commenced as original action in circuit court.

[4] Zoning and Planning 414 ⚷1575

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k1572 Nature and Form of Remedy
414k1575 k. Certiorari. Most Cited Cases
(Formerly 414k565)
Party challenging local government's decision on comprehensive plan amendment should file original action in circuit court, not petition for certiorari.
***204** T. Geoffrey Heekin,S. Hunter Malin and Eric L. McAliley of Bartlett & Heekin, P.A., Jacksonville, FL, for Petitioners.

***205** William S. Graessle of Winegeart & Graessle, P.A.; and Stephen Stratford, Jacksonville, FL, for Respondent.

Donna E. Blanton of Steel, Hector & Davis LLP, Tallahassee, FL, for Florida Home Builders Association, Amicus Curiae.

WELLS, C.J.

[1] We have for review a decision on the following question certified to be of great public importance:

ARE DECISIONS REGARDING SMALL-SCALE DEVELOPMENT AMENDMENTS PURSUANT TO SECTION 163.3187(1)(c), FLORIDA STATUTES, LEGISLATIVE IN NATURE AND, THEREFORE, SUBJECT TO THE FAIRLY DEBATABLE STANDARD OF REVIEW; OR QUASI-JUDICIAL, AND SUBJECT TO STRICT SCRUTINY?

City of Jacksonville Beach v. Coastal Development of North Florida, Inc., 730 So.2d 792 (Fla. 1st DCA 1999). We have jurisdiction. *See*art. V, § 3(b)(4), Fla. Const. For the reasons expressed below, we answer the certified question by holding that the small-scale development amendment decisions made pursuant to section 163.3187(1)(c), Florida Statutes (Supp.1996), are decisions which are legislative in nature and subject to the "fairly debatable" standard of review.[FN1] We approve the decision below.

FN1. As we said in *Martin County v. Yusem,* 690 So.2d 1288 (Fla.1997):

> The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety. In other words, an ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity.
>
> *Id.* at 1295 (citations and initial quotation marks removed).

PROCEDURAL HISTORY

Coastal Development of North Florida, Inc. (Developers), applied to the City of Jacksonville Beach (City) for a small-scale development amendment to the City's comprehensive plan pursuant to section 163.3187(1)(c), Florida Statutes (Supp.1996).[FN2] Developers wanted to commercially develop 1.7 acres of a parcel of land they own in the City. The proposed amendment sought to change the site's designation on the City's future land use map from "Residential-Low Density" to "Commercial Professional Office." The Jacksonville Beach City Council followed the recommendation of the City's Planning Commission and denied the proposed amendment. Developers petitioned the circuit court for a writ of certiorari and, alternatively, commenced an action for declaratory and injunctive relief.

FN2.Section 163.3187(1)(c) establishes conditions under which local governments may adopt comprehensive plan amendments that are directly related to proposed small-scale development activities.

The circuit court [FN3] observed that in *Martin County v. Yusem,* 690 So.2d 1288 (Fla.1997), this Court held that comprehensive plan amendment decisions by a local government are legislative in nature, but that ***206** court also noted that we specifically declined to determine whether small-scale development amendments were as well.[FN4] The circuit court then acknowledged our opinion in *Board of County Commissioners v. Snyder,* 627 So.2d 469, 476 (Fla.1993), in which we held zoning changes of limited impact are quasi-judicial in nature subject to "strict scrutiny" review. [FN5] The circuit court likened small-scale development amendments to rezoning requests and thus concluded that *Snyder* applied to this

category of developments.[FN6]

FN3. It appears that pursuant to procedures in the Fourth Judicial Circuit, a single circuit judge presides over first-tier certiorari review. The number of circuit judges presiding over first-tier certiorari review is not uniform throughout Florida's circuit courts. Some circuits have three-judge panels for such review. We recently referred the question of whether there should be a uniform procedure for first-tier certiorari review to the Rules of Judicial Administration Committee of The Florida Bar. *See Florida Power & Light Co. v. City of Dania,* 761 So.2d 1089, 1094 (Fla.2000).

FN4. In footnote 6 of *Yusem,* we said:

> We do note that in 1995, the legislature amended section 163.3187(1)(c), Florida Statutes, which provides special treatment for comprehensive plan amendments directly related to proposed small-scale development activities. Ch. 95-396, § 5, Laws of Fla. We do not make any findings concerning the appropriate standard of review for these small-scale development activities.
>
> *Yusem,* 690 So.2d at 1293 n. 6.

FN5. This Court in *Snyder* stated that strict scrutiny in the land use context must be distinguished from constitutional strict scrutiny. In the land use context, strict scrutiny generally means strict compliance with the comprehensive plan. *See Snyder,* 627 So.2d at 475.

FN6. While we disagree with his conclusion, Circuit Judge Charles O. Mitchell, Jr., is commended for his thorough analysis provided in his order granting certiorari. *See Coastal Development of North Florida, Inc. v. City of Jacksonville Beach,* No. 97-000079-AP (Fla. 4th Cir. Ct., order dated June 30, 1998).

The circuit court concluded, as a matter of law, that: (1) a local government acts in a quasi-judicial rather than legislative manner when acting on small-scale development amendment requests; (2) on review, quasi-judicial decisions are subject to strict scrutiny and must be supported in the record by competent, substantial evidence; and (3) certiorari review is appropriate to review quasi-judicial decisions made by local governments. Applying the strict scrutiny standard, the circuit court found that the City's action was not supported by competent, substantial evidence. Thus, the circuit court granted the petition for certiorari, quashed the City's decision denying the Developers' application, and ordered the City to grant Developers' application. The City petitioned the First District Court of Appeal for second-tier certiorari review.

On review in the First District, the First District granted the City's petition for the

writ and held that decisions regarding small-scale development requests made pursuant to section 163.3187(1)(c) are legislative decisions. *See Coastal Development,* 730 So.2d at 794-95. Thus, the First District held review of such decisions is by a de novo action in the circuit court subject to the deferential "fairly debatable" standard of review. *See id.* The First District reasoned that all comprehensive plan amendment requests involve policy formation rather than application because all comprehensive plan amendment requests, regardless of size, require the governmental entity to determine whether it is socially desirable to reformulate policy. *See id.* at 794. The First District also found that this Court in *Yusem* desired to bring predictability to this area of law by mandating a uniform approach to all comprehensive plan amendment requests. *See id.* Accordingly, the First District granted the petition for certiorari, reversed the circuit court, remanded the case for a de novo hearing on the Developers' alternative action for declaratory and injunctive relief, and certified the question to this Court. *See id.* This review follows.

ANALYSIS

[2][3] In *Yusem,* we described the process for amending a local government's ***207** comprehensive plan, and we also noted the involvement of the Department of Community Affairs (Department) in this process. *Yusem,* 690 So.2d at 1294-95. The Department is the designated state land planning agency [FN7] under the Local Government Comprehensive Planning and Land Development Regulation Act (the Act).[FN8] The amendment process entails, among other things, an integrated review process involving a mandatory review by the Department. *See* *Yusem,* 690 So.2d at 1294. A local government must conduct two advertised public hearings on each proposed amendment prior to its adoption.[FN9] A local government may only amend its comprehensive plan twice a year.[FN10]

FN7. *See* § 163.3164(20), Fla. Stat. (1995).

FN8. *See* §§ 163.3161-.3243, Fla. Stat. (1995), et. seq.

FN9. *See* § 163.3184(15)(b), Fla. Stat. (Supp.1996).

FN10. *See* § 163.3187(1), Fla. Stat. (Supp.1996).

The process of adopting small-scale development amendments is somewhat different. Section 163.3187(1)(c) describes the process of proposing and adopting a small-scale development amendment. Unlike regular comprehensive plan amendments, small-scale development amendments only require one reading for adoption by the local government,[FN11] are not constrained by the two-amendments-per-year rule,[FN12] and are not subject to mandatory review by the Department.[FN13] Administrative review still exists in which "any affected person" may challenge the adopted amendment for compliance with the Act.[FN14] The Department has standing to intervene in these administrative hearings.[FN15]

FN11.*See*§ 163.3187(1)(c)3., Fla. Stat. (Supp.1996).

FN12.*See*§ 163.3187(1)(c), Fla. Stat. (Supp.1996).

FN13.*See*§ 163.3187(3)(a), Fla. Stat. (Supp.1996).

FN14.*See*§ 163.3187(3)(a), Fla. Stat. (Supp.1996).

FN15.*See*§ 163.3187(3)(a), Fla. Stat. (Supp.1996).

Proposals eligible for treatment as small-scale development amendments are limited to properties that, among other things: are ten acres or fewer; have not been subject to an amendment within the previous year; are no closer than 200 feet from any property of the same owner granted a change within the previous year; and are not located within an area of critical state concern. [FN16] A local government is limited to a cumulative acre limit per year of total area within that government's boundaries that may be subject to small-scale amendments.[FN17] A small-scale amendment may not involve a change to the textual goals, policies, or objectives of the comprehensive plan. [FN18]

FN16.*See*§ 163.3187(1)(c)1., Fla. Stat. (Supp.1996).

FN17.*See*§ 163.3187(1)(c)1.a., Fla. Stat. (Supp.1996).

FN18.*See*§ 163.3187(1)(c)1.d., Fla. Stat. (Supp.1996). Section 163.3187(1)(c)1.d. states:

> The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity.

A comprehensive plan is composed of several elements.[FN19] One element of the comprehensive plan is the future land use ***208** element. [FN20] The future land use element designates "proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and privates uses of land." [FN21] The future land use map (FLUM) is a component of the future land use element of the comprehensive plan. *See Yusem,* 690 So.2d at 1292. The FLUM is a pictorial depiction of the future land use element and is supplemented by written "goals, policies, and measurable objectives." [FN22] The FLUM must be internally consistent with the other elements of the comprehensive plan.[FN23]

FN19.*See*§ 163.3177, Fla. Stat. (Supp.1996).

FN20.*See*§ 163.3177(6), Fla. Stat. (Supp.1996).

FN21.§ 163.3177(6)(a), Fla. Stat. (Supp.1996).

FN22.§ 163.3177(6)(a), Fla. Stat. (Supp.1996).

FN23.*See*§ 163.3177(2), Fla. Stat. (Supp.1996).

In *Yusem,* we held that all comprehensive plan amendments are legislative decisions. *See Yusem,* 690 So.2d at 1295. At that time, we expressly declined to pass upon small-scale development amendments, as that issue was not before us. *See id.* at 1293 n. 6. Subsequent to our decision in *Yusem,* four of the five district courts have held that small-scale development amendments are legislative in nature and subject to the fairly-debatable standard of review.[FN24]

FN24.*See Minnaugh v. County Comm'n of Broward County,* 752 So.2d 1263 (Fla. 4th DCA 2000), *review granted,*No. SC00-875, 773 So.2d 56 (Fla.2000); *Palm Springs Gen. Hosp., Inc. v. City of Hialeah Gardens,* 740 So.2d 596 (Fla. 3d DCA 1999); *City of Jacksonville Beach v. Coastal Dev. of North Florida, Inc.,* 730 So.2d 792 (Fla. 1st DCA 1999); *Fleeman v. City of St. Augustine Beach,* 728 So.2d 1178 (Fla. 5th DCA 1998).

We based our holding in *Yusem* on several factors. First, we concluded that because the original adoption of the comprehensive plan by a local government was a legislative act, it naturally followed that a proposed modification of that comprehensive plan was likewise legislative in nature. *See id.* at 1294. Second, the integrated review process by several levels of government indicates that an action on a comprehensive plan amendment is a policy decision. *See id.* Third, section 163.3184(10)(a) mandates that the fairly-debatable standard of review applies in an administrative hearing to determine compliance with the Act. *See id.* at 1295. Fourth, the holding would remove uncertainty and promote uniformity in the land-use law context. *See id.* We conclude that same reasoning applies here, and we see no reason to deviate from it.

Developers contend that a primary distinction between small-scale developments and the developments covered by *Yusem* is that small-scale developments involve changes to the FLUM which do not alter the textual goals, policies, and objectives of a local government's comprehensive plan and are thereby more similar to zoning applications covered by *Snyder.* We do not agree. Rather, we find the following analysis to be persuasive:

[A]mendments to a legislatively adopted statement of general policy are legislative acts. Even if the comprehensive plan amendment consists of an amendment to the comprehensive plan's future land use map which is applicable only to a single tract of land, the amendment should be deemed

> legislative. The future land use plan map alone does not determine or control the uses which can be made of a particular tract of land. Rather, the comprehensive plan as a whole, including the future land use map ***209** and all of the other policies of the plan, consists of legislative policies that must be applied to determine what uses can be made of a specific tract of land.

Thomas G. Pelham, *Quasi-Judicial Rezonings: A Commentary on the Snyder Decision and the Consistency Requirement,* 9 J. Land Use & Envtl. L., 243, 300-301 (1994).

The FLUM is part of the comprehensive plan and represents a local government's fundamental policy decisions. Any proposed change to that established policy likewise is a policy decision. The FLUM itself is a policy decision. A decision that would amend the FLUM requires those policies to be reexamined, even though that change is consistent with the textual goals and objectives of the comprehensive plan. Therefore, the scope of the proposed change is irrelevant because any proposed change to the FLUM requires a reexamination of those policy considerations and not an application of those policies.

By its very nature, a proposed amendment to the FLUM, as an element of the comprehensive plan, requires policy reformulation because the amendment seeks a change to the FLUM. However, a proposed zoning change under *Snyder* must be consistent with the FLUM, thus requiring policy application instead of policy reformulation. *See Snyder,* 627 So.2d at 475. The First District noted the distinction between policy reformulation and application. We approve the First District's thoughtful opinion on this point:

It seems to us that all comprehensive plan amendment requests necessarily involve the formulation of policy, rather than its mere application. *Regardless of the scale of the proposed development,* a comprehensive plan amendment request will require that the governmental entity determine whether it is socially desirable to reformulate the policies previously formulated for the orderly future growth of the community. This will, in turn, require that it consider the likely impact that the proposed amendment would have on traffic, utilities, other services, and future capital expenditures, among other things. That is, in fact, precisely what occurred here. Such considerations are different in kind from those which come into play in considering a rezoning request.

Coastal Development, 730 So.2d at 794 (emphasis added).

The lack of mandatory Department oversight does not alter our conclusion. While small-scale development amendments do not undergo the extensive integrated review process we described in *Yusem,* there are still administrative remedies available to any aggrieved party in the small-scale development amendment context that are not available in the zoning context. [FN25] The Department may

also intervene in these administrative hearings. *See*§ 163.3187(3)(a), Fla. Stat. (Supp.1996). Additionally, our conclusion in this case reinforces our policy underlying *Yusem,* which was to promote uniformity and certainty in land use planning decisions. *See* *Yusem,* 690 So.2d at 1295.

> FN25.Section 163.3187(3)(a) confers standing in these administrative hearings to any "affected person" as broadly defined by section 161.3184(1)(a), without the need to allege an injury. Conversely, when challenging a zoning decision, an affected person must allege an injury. *See*§ 163.3215, Fla. Stat. (1995).

[4] As we stated in *Yusem,* a party challenging a local government's decision on a comprehensive plan amendment should file an original action in the circuit court and not a petition for certiorari. *See* *Yusem,* 690 So.2d at 1295. The circuit judge, in his order granting certiorari, made an alternative finding that, even if ***210** the fairly-debatable standard applied, the City failed to meet that burden in this case. However, the circuit court's conclusion on this point was improper because the circuit court made this finding only upon a review of the record and not in a de novo action. Thus, remand is proper to allow the circuit court to proceed with the Developers' alternative action for declaratory and injunctive relief.

CONCLUSION

We answer the certified question by holding that small-scale development amendments sought pursuant to section 163.3187(1)(c) are legislative decisions which are subject to the fairly-debatable standard of review. A challenge to a local government's decision on a small-scale development amendment may be commenced as an original action in the circuit court. We approve the decision under review and remand with directions that the circuit court proceed on the Developers' alternative action for declaratory and injunctive relief in a manner consistent with this opinion.

It is so ordered.

SHAW, HARDING, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.
Fla.,2001.
Coastal Development of North Florida, Inc. v. City of Jacksonville Beach
788 So.2d 204, 26 Fla. L. Weekly S224

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FORT MYERS BEACH, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
COMPREHENSIVE PLANNING STAFF REPORT

TYPE OF CASE: Small-Scale Comprehensive Plan Amendment

CASE NUMBER: CPA2010-0001

LPA HEARING DATE: March 23, 2010

TIME: 9:00 AM

APPLICATION SUMMARY:

Applicant: James F. Purtell, Patrick Purtell, and Fred Paine (Michael Roeder, AICP, agent)

Request: Amend the Comprehensive Plan Future Land Use Map (FLUM) to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM.

Subject area: 821 Estero Boulevard and 831 Estero Boulevard, parcels legally described in **Exhibit A** and **Exhibit B**.

Current zoning: RC (Residential Conservation)

Current use(s): 821 Estero Boulevard – Single-family home
831 Estero Boulevard – Multifamily building containing four (4) dwelling units

Recommendation:

Staff recommends that the proposed amendment **be adopted**, and that the Future Land Use Map **be amended** to change the FLUM category of the subject area from the "Mixed Residential" category to the "Pedestrian Commercial" category.

Basis and Findings of Fact:

Policy 4-C-10 provides that the intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to the Plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner.

Objective 4-A is to maintain the small-town character of Fort Myers Beach and the pedestrian-oriented 'public realm' that allows people to move around without their cars even in the midst of peak-season congestion.

Policy 4-A-3 requires the Town to prevent intrusive commercial activities in residential neighborhoods.

Policy 4-C-2 provides that commercial intensity may be controlled by maximum height regulations or by other standards in the plan or land development regulations, and that the land development code must specify maximum commercial intensities by reference to floor-area ratios, with such maximums being set no higher than 2.5 in the "Pedestrian Commercial" land use category and no higher 1.5 in other categories.

Policy 4-C-3 provides for the evaluation of proposals for new or expanded commercial uses, stating that the land development code will specify the permitted form and extent for such uses in the "Pedestrian Commercial" category and will subject them to a streamlined approval process, while allowing landowners the option to pursue planned development rezoning to seek other forms of commercial development.

Policy 4-C-3 further provides that shopping and services for residents and overnight guests are to be strongly preferred over shopping and services to attract additional day visitors, and that shopping and services that contribute to the pedestrian character of the town are to be strongly preferred over buildings designed primarily for vehicular access.

Policy 4-C-3 further emphasizes that the neighborhood context of proposed commercial uses should be considered, including the type of activity and its associated traffic, hours, and noise implications; its physical scale (height and bulk of buildings); and the orientation of buildings and parking, providing that commercial activities that would intrude into residential neighborhoods in any of these respects should not be approved.

Policy 1-A-3 states that in commercial and mixed-use areas, the town will identify portions of Estero Boulevard where land development regulations could work to "frame" coherently the boulevard by bringing buildings closer to the sidewalk, encouraging compatible means of meeting mandatory flood elevation requirements, locating most parking to the rear of buildings, facilitating pedestrian and bicycle access, and adopting design guidelines to encourage urbanism that contributes to the human scale and "beach cottage character."

Approval of the requested amendment would not increase the allowable residential density. The maximum density allowed in the "Mixed Residential" category is 6 dwelling units per acre; the maximum density allowed in the "Pedestrian Commercial" category is 6 dwelling units per acre.

The subject area is located between a property that contains a convenience food and beverage store, and that is zoned DOWNTOWN, allowing a variety of commercial uses; and a property that is zoned CPD (Commercial Planned Development) and currently could be developed only with a public parking lot or a park. Other uses in the vicinity include a midrise hotel, a public park, low-rise motels, a public utility water tank, and a mix of single-family and two-family residences.

Staff Discussion

Introduction:

James Purtell, Patrick Purtell, and Fred Paine (collectively "applicants") have requested a comprehensive plan amendment to change the Future Land Use Map category (FLUM) applied to their property ("subject area") from "Mixed Residential" to "Pedestrian Commercial." Their application is attached to this report as **Attachment A**. The subject area comprises two parcels, one owned by Fred Paine, and one owned by James Purtell and Patrick Purtell, including a total of 14,600 square feet or about 0.335 acres of private property. The applicants urge adoption of the requested amendment by reference to former zoning applied to the subject area by Lee County, and to events in the course of the Town's inception and initial processes of comprehensive planning and adoption of consistent land development regulations. Aside from these historical reasons, they also briefly address their request in relation to Goal 4, Objective 4-A, and several related policies in the comprehensive plan's Future Land Use element.

If approved, the requested amendment would allow the possibility of future rezoning of all or part of the subject area to zoning districts that could allow commercial uses such as retail, office, restaurant, or hotel/motel. Zoning must be consistent with the comprehensive plan FLUM category. In the current "Mixed Residential" category, rezoning to allow commercial uses of any kind can only be allowed through the planned development zoning process, and commercial uses are specifically limited to uses with lower impacts on nearby residential areas. Land in the "Pedestrian Commercial" category could be rezoned to a planned development zoning district, which would allow specific conditions to be placed on development and uses, or to other conventional zoning districts provided in the LDC, such as CO (Commercial Office) or potentially DOWNTOWN, which would not allow specific conditions to be placed on development and uses, but would allow commercial uses.

Small Scale Amendment Criteria:

The applicants have represented their request as a "small scale" amendment to the comprehensive plan's FLUM. The "small scale" terminology occurs in State law provisions relating to comprehensive planning, and is not directly related to

any formal Town policy. A small scale amendment may be approved without regard for the statutory limits on the frequency of consideration of amendments, which would otherwise limit the Town to two sets of amendments per calendar year. State law provides several conditions that an amendment must meet in order to qualify for this exception. The proposed amendment must meet the following, which are provided by Section 163.3187(c), Fla. Statutes:

(1) the proposed amendment must involve a use of 10 acres or fewer;
(2) the cumulative annual effect of the acreage of all small scale amendments must not exceed certain much higher thresholds (the lowest of which is 80 acres);
(3) the proposed amendment must not involve the same property granted a change within the previous 12 months;
(4) the proposed amendment must not involve the same owner's property within 200 feet of a property granted a change within the previous 12 months;
(5) the proposed amendment must only involve a change to the FLUM;
(6) the property must not be located in an "area of critical state concern";
(7) any residential use involved must have a density of 10 units or less per acre, or the proposed category must allow a maximum density of the same or less than is allowed by the current category.

After analyzing the applicants' request, and considering the fact that the Town has not amended the Comprehensive Plan FLUM in the previous 12 months, and the fact that no part of the Town is located in an "area of critical state concern", staff concludes that the applicants' request meets all of the statutory criteria set forth above.

Comprehensive Plan Background

After local comprehensive planning became mandatory in Florida, in the mid-1980s, Lee County adopted its first comprehensive plan in 1986. Lee County had had zoning regulations since 1962, so the Lee Plan and FLUM came *after* years of zoning. Lee Plan FLUM categories and previously existing zoning districts were not always completely consistent. Many areas were nominally zoned for commercial uses but had never been developed with commercial projects (or often with any projects) but the Lee Plan had to begin to resolve the conflicts between a tradition of nearly 25 years of zoning done without a comprehensive plan, and the newly adopted comprehensive plan that was based on the most recent data and community input.

At the urging of community groups from the then-unincorporated Fort Myers Beach area, in 1991 the Lee County Board of County Commissioners adopted Ordinance 91-19, amending the Lee County Comprehensive Plan. The subject area was located at that time in a FLUM category identified by the Lee Plan as "Urban Community." Ordinance 91-19 amended the Lee Plan to add a Goal and

several Objectives and Policies relating specifically to Fort Myers Beach, of which Estero Island, including the subject area, was a part. Policy 18.2.1 provided that

> . . . within the Urban Community land use category, commercial expansion into residential neighborhoods shall not occur. Any new commercial development or redevelopment shall conform to the requirements of the Commercial Planned Development zoning category. Density shall be limited to the existing base densities provided by the Lee Plan Future Land Use element.

For nearly five years prior to the Town's incorporation at the end of 1995, Lee County's adopted comprehensive plan prohibited "commercial expansion into residential neighborhoods" in the Urban Community land use category, and required any new commercial development or redevelopment in the Urban Community land use category in Fort Myers Beach to be evaluated through the planned development rezoning process.

From mid-1996 through late 1998 the Town developed a new comprehensive plan, including a Future Land Use element and Future Land Use Map as required by State law. The textual discussion in the Future Land Use element begins with the words "The Town of Fort Myers Beach was born of dissatisfaction with the land-use policies of Lee County." Included within the new Future Land Use element was a Future Land Use Map, which assigned all land and water within the Town to one of eight categories. In discussing the new Future Land Use Map, the text (on page 4-39) commented that "the special policies that were supposed to apply to the 'Urban Community' category to avoid over-commercialization have not accomplished their purpose." In general, the Town's Future Land Use Map more specifically distinguished those areas of the Town where commercial uses would be encouraged from those areas where such uses would be strongly discouraged or prohibited. The subject area was included within the "Mixed Residential" category in the Town's adopted Comprehensive Plan, which became effective January 1, 1999.

Policy 4-B-4 provides as follows, with regard to the "Mixed Residential" category:

> Designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining

> commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development zoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.

Presently the "Mixed Residential" FLUM category would prevent conventional rezoning to a zoning district allowing commercial uses. "Lower-impact" uses such as offices, motels, churches and public uses could be allowed only through planned development rezoning. The "Mixed Residential" category typically applies in neighborhoods that are primarily residential but include a mix of housing types.

The "Pedestrian Commercial" FLUM category is defined as follows, according to **Policy 4-B-6:**

> 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 the 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%.

In 2003-2004 the applicants participated in a larger request for amendments that embraced properties on both sides of Lagoon Street, for which the LPA recommended denial, and a motion to proceed with the amendment at a Town Council hearing failed by a tie vote of 2 to 2 with one member abstaining. The staff report for the 2004 case rightly emphasized that any commercial activities in the "Mixed Residential" category could be allowed only through planned development rezoning, whereas the "Pedestrian Commercial" category could allow rezoning to other zoning districts such as "DOWNTOWN." The 2004 staff report also opined that "the planned development zoning district is the best way to make sure a development is of the appropriate intensity and compatible with

its neighborhood" and noted that in planned development zoning, the Town Council has the ability to attach special conditions to the approval of a development. The staff report went on to suggest that this ability to review development proposals on a case-by-case basis and attach special conditions was "the most effective tool the public has to ensure non-intrusive development and preserve neighborhood character."

Planned development zoning is a method of regulating land use that allows a community to introduce *flexibility* into the approval of planned projects for development of specific areas. Together with the flexibility, which comes in the form of deviations from standard requirements that would otherwise apply, special conditions may be attached. Through the process of public hearings involved in planned development zoning, members of the public can voice their concerns so that the special conditions can be designed to mitigate expected impacts. Planned development zoning can be anywhere on a continuum between blessing and curse, but it is not necessarily the best or surest way to keep one area compatible with another. It is the method selected by the Town in its comprehensive plan and land development regulations for public review of proposals for new or expanded commercial uses in the Mixed Residential FLUM category, and in certain other circumstances. In the Pedestrian Commercial FLUM category, planned development zoning is not always required because the form-based zoning requirements of the DOWNTOWN zoning district encourage commercial uses, particularly in mixed-use buildings, provided they are designed to implement the desired neighborhood character, which is enforced by requiring compliance with specific development standards. By way of example, the SANTINI zoning district provides requirements related to the ongoing use of the existing buildings and establishes form-based standards for future redevelopment that could transform the district to a planned neighborhood center. It would be accurate to say that planned development zoning allows the Town a greater ability to calibrate the scope of approvals of specific projects, by means of deviations and conditions, than the Town's conventional zoning districts.

<u>Adjacent zoning and existing land uses</u>

The property immediately to the southeast of the subject area, at street address 841 Estero Boulevard, is zoned DOWNTOWN and is within the Pedestrian Commercial FLUM category. This property is developed with a convenience food and beverage store. Further southeastward, after crossing Lagoon Street, the DOWNTOWN zoning and Pedestrian Commercial FLUM category continue on properties containing small motels, and then properties containing retail stores.

The property immediately to the northwest of the subject area, at 815 Estero Boulevard, is zoned CPD and is within the Recreation FLUM category. This property was a part of the Edison Beach House motel's CPD zoning district at the

time of its development, and its residential density and commercial intensity were transferred to the Edison Beach House parcel at 830 Estero Boulevard. Before that project the 815 Estero parcel contained an 8-unit apartment building. The parcel was included in the Recreation FLUM category when the comprehensive plan was adopted to reflect its lack of development rights. Currently the CPD zoning of this property allows for its use only as a park or, subject to certain conditions, as a parking lot. This property is currently owned by one of the applicants, Fred Paine, and his wife. Continuing to the northwest after crossing Lagoon Street, the property at 815 Lagoon Street is zoned IN (Institutional) and is within the Mixed Residential FLUM category. It is currently developed with an essential services building and essential service equipment, including a public utility water tank and related equipment. It was first developed for this purpose approximately 1954. Continuing to the northwest, properties are zoned RC (Residential Conservation) and are within the Mixed Residential FLUM category.

The properties to the south of the subject area, across Estero Boulevard, include the Edison Beach House motel at 830 Estero Boulevard, which is zoned CPD and is within the Mixed Residential FLUM category, and Lynn Hall Park, which is zoned CF (Community Facilities) and is within the Recreation FLUM category. Lee County acquired this land from T.H. Phillips in 1949.

To the southwest of the subject area, across Estero Boulevard, are multifamily residential buildings, zoned RM (Residential Multifamily), that are within the Mixed Residential FLUM category.

Northeast of the subject area, on both sides of Lagoon Street, are residential buildings, including a mix of single-family homes and duplexes, some of which contain accessory apartments, all zoned RC (Residential Conservation) and within the Mixed Residential FLUM category. Fred Paine and his wife own two of these properties. Directly east of the subject area and across Lagoon Street is a multifamily complex, at 855 Lagoon Street, that is zoned RPD (Residential Planned Development), and is within the Mixed Residential FLUM category). A development order has been issued for this property to be redeveloped with a small multifamily building. James Purtell owns an equal share of this property in common with two other entities.

Plan Consistency

The comprehensive plan cautions against allowing commercial activities to spread into residential areas, thus “intruding” upon the relative peace and quiet of a residential neighborhood with excessive motor vehicle trips, unsightly parking areas, unusually large or noisy groups of people congregating, and potential for noises, smells, and other irritations to those who may be trying to sleep, read a book, or enjoy dinner quietly within the comfort of their homes. The threat of commercial intrusion into residential areas is ever-present in Fort Myers Beach, where only a single roadway traverses the length of a barrier island. The

mystery of choosing a location for one's commercial enterprise is simplified: locate near the beach and on Estero Boulevard, and one can be sure that a supply of patrons will at least pass one's establishment. The comprehensive plan balances the attraction of seemingly easy money for businesses located near the beach against the concerns of residents in established residential areas, who often would prefer not to see their neighborhoods transformed into shopping and dining areas, by limiting the areas where commercial activities are generally allowed to two areas, one near "Times Square" and the bridge from the mainland, and one near the south end of the island at Santini Plaza and Fish Tale Marina. These are the areas where the "Pedestrian Commercial" FLUM category applies. Elsewhere, new or expanded commercial activities typically require, at least, review through the planned development rezoning process (as in the "Boulevard" FLUM category) in order to be approved. In the "Mixed Residential" FLUM category new or expanded uses are limited by the text of **Policy 4-B-4**, including its requirement to rezone to planned development to initiate any new or expanded commercial uses.

Commercial "intrusion" into residential areas is, of course, a fairly debatable concept. For one person an intrusion might be a noise audible from an establishment located half a mile away; for another it might be the smell of a grease trap on an adjoining property on the other side of a chain-link fence. The degree of commercial intrusion is relative to the existing character of the area and its wider environs. The subject area is between an existing convenience store and a parcel zoned for a parking lot or park, which is across Lagoon Street from a public utility water tank. It is across Estero Boulevard from a relatively large county-owned public park that is heavily traveled by the beach-going public, and from a six-story hotel building. Beyond the public park to the south are the public fishing pier and the intense commercial activity of "Times Square." The parcel at 815 Estero that is zoned for a parking lot or a park and the Town's water tank at 815 Lagoon Street form a conceptual barrier to further commercial intrusion northward along Estero Boulevard. The Town remains in control of any future effort to leap over this barrier by rezoning or by amending the comprehensive plan, and can prevent commercialization from spreading further northward along Estero Boulevard.

Whether the general environs of the subject area, between the Town water tank and the southerly intersection of Lagoon Street with Estero Boulevard (roughly, lots 32 through 41, Block A, and all of Block B, of Island Shores Unit 2) is a "residential area" depends on one's perspective. The parking lot parcel at 815 Estero Boulevard had been occupied by an 8-unit apartment building for several decades before its residential density was transferred across Estero Boulevard to the Edison Beach House motel project at 830 Estero Boulevard in the late 1990s. The convenience food and beverage store at 841 Estero Boulevard was developed approximately 1983, according to the records of the Lee County Property Appraiser. The water tank parcel at 815 Lagoon Street was first developed with water utility facilities circa 1954. Lee County acquired the Lynn

Hall Park property from T.H. Phillips in 1949. One row of lots in Block A of Island Shores Unit 2, and a canal, separate the subject area from the residential area of Matanzas View Subdivision to the northeast, approximately 200 feet away. On the other hand, that row of lots in Block A, roughly including lots 32 through 40, is developed with residential buildings and is zoned for residential uses. Fred Paine and his wife own lot 38 and 39; Jim Purtell owns a partial interest in lot 33. Two parcels in Block B, to the northeast of the subject area, are also developed with residential buildings.

Comprehensive Plan **Policy 4-C-10** specifically requires that proposed changes to the comprehensive plan to increase allowable intensity or density must be shown to be clearly in the public interest, not just in the private interest of the petitioning landowner. Under the current "Mixed Residential" FLUM category the subject area would continue to be limited primarily to residential uses, with any commercial uses subject to public hearing review through the planned development zoning process. Possible scenarios might include a development project combining the two parcels in the subject area with the parking lot parcel at 815 Estero Boulevard to develop one multi-family building with a parking lot on the 815 Estero parcel, or separate redevelopment of the two parcels in the subject area, probably with one large single-family home on each, either of which might involve lot recombination and resubdivision, and/or rezoning. The "Pedestrian Commercial" FLUM category would allow for rezoning to allow more intense types of commercial use than the "Mixed Residential" FLUM category, and would not require that such rezoning be to a planned development district.

Based on the applicants' comments regarding the C-1 zoning under Lee County and the Town until March 2003, it seems that they theorize that some form of more intense commercial use of their properties was possible without rezoning in 1997 and 2001 when they purchased their properties. They express that they were "surprised and disappointed" to learn in 2003 of the impending rezoning of the property to a residential zoning district consistent with the "Mixed Residential" FLUM category, and later describe the 2003 rezoning as a Town action that "eliminated" what they characterize as a "land use entitlement." Lee Plan Policy 18.2.1 clearly prohibited commercial activities from intruding on residential areas, even if located in the "Urban Community" land use category, and required planned development zoning in order to allow new commercial development or redevelopment in the Urban Community category, from 1991 until the effective date of the Fort Myers Beach Comprehensive Plan. Commercial use of either parcel in the subject area was neither reasonably foreseeable nor non-speculative at any time after the 1991 effective date of Lee County Ordinance 91-19. The applicants' implication that it would be equitable, so in the public interest, to "correct" the zoning of their properties, is therefore inaccurate. The "wide variety" of new or redeveloped commercial uses that might have been allowed in some circumstances in Lee County's C-1 zoning district have been subject to the same limitation (not to intrude upon residential areas) and the

same review process (planned development rezoning) in order to be allowed in the subject area at any time since 1991.

Nonetheless, the requested amendment itself has merits that may lead to the finding that its adoption is in the public interest. The phrase "in the public interest" represents a generalized condition or qualification, whose content is usually evaluated within its context rather than by comparison to a universal standard. Public interests relevant to the requested amendment include the comprehensive plan's stricture not to allow commercial intrusion into residential areas, and the community design objectives of preserving the Town's "small-town" character by encouraging urbanism that contributes to the "human scale" and "beach-cottage character" of the built environment. For new development and for redevelopment, the design standards to implement these policies in commercial areas are included in the regulations of the DOWNTOWN zoning district or in the Commercial Planned Development rezoning process. Several policies, including most notably **Policy 4-E-4**, encourage dry-floodproofing commercial buildings to provide ground-level commercial space in pedestrian areas. Where dry-floodproofing is not possible, the comprehensive plan and LDC have not identified a preferred means to encourage urbanism that contributes to the "human scale" or the "beach-cottage character" of the built environment. It seems intuitive that locating the lowest horizontal member of a structure between 10 and 15 feet above the adjacent grade is not conducive to the "human scale" or the "beach-cottage character" of the built environment.

The foreseeable scenarios for redevelopment of the parcels within the subject area under the Mixed Residential FLUM category and current RC zoning do not seem likely to contribute to the Town's human scale. Prior to the adoption of the Lee Plan the zoning in the vicinity of the subject area allowed for commercial activities, leading to the mix of building types and uses that has persisted for decades after allowable new residential densities were decreased and allowable new commercial uses were restricted. Separating parcels containing commercial uses from parcels containing residential uses is impractical in the immediate vicinity of the subject area. Amending the FLUM to change the category in the subject area to Pedestrian Commercial would allow the parcels in the subject area to contain commercial uses, or a mix of residential and commercial uses, either in existing or in redeveloped buildings. Given the location between a public parking lot, a six-story hotel, a public park, and a convenience food-and-beverage store, would it be more in the public interest to limit the use of the parcels in the subject area almost entirely to residential uses, or to allow these properties to be used for commercial uses, or a mix of residential and commercial uses?

Staff recommends the Town Council find that adopting the requested amendment would be clearly in the public interest. The uses in the vicinity of the subject area can best be characterized as a mix of a commercial and residential uses. Changing the FLUM category of the subject area to Pedestrian

Commercial would allow Town Council to consider future rezoning within the subject area that would allow a similar mix of uses, as encouraged in other areas already located within the Pedestrian Commercial FLUM category.

Coastal Issues

The Town of Fort Myers Beach has chosen to participate in the National Flood Insurance Program (NFIP), which allows the sale of federally-subsidized flood insurance to property owners within the Town. The Federal Emergency Management Agency (FEMA) has issued a flood insurance study (FIS) and flood insurance rate maps (FIRMs) that identify the entire Town as being within a "special flood hazard area," which means that the area is subject to flooding during the 1% annual chance flood event. In a special flood hazard area, government lenders, government sponsored housing enterprises, and federally regulated lending institutions are prohibited from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home unless the building or mobile home and any personal property that secures the loan is covered by flood insurance. In order to participate in the NFIP and make federally subsidized flood insurance available, the Town must adopt and enforce flood protection regulations meeting certain minimum requirements set forth by FEMA.

According to the FIRMs now in effect, the subject area is located within flood zone VE, partly with base flood elevation of 15 feet above NAVD 88 (i.e. 15 feet above "sea level") and partly with base flood elevation of 14 feet above NAVD 88. In order to meet NFIP minimum requirements, the Town's flood protection regulations must, and do, require that all new construction and substantial improvements located in flood zone VE have the lowest horizontal structural member elevated on pilings or columns to or above the base flood elevation, with all space below the lowest horizontal structural member open so as not to impede the flow of flood waters. This requirement precludes the construction of nonresidential buildings that are engineered so as to be "dry-floodproofed" and include habitable floor areas at grade (and below the base flood elevation) in flood zone VE.

The existing buildings located on the parcels within the subject area were built circa 1954 and 1960, before the Town (or Lee County) participated in the NFIP and indeed before the NFIP was established. Each building may be maintained unless and until it is improved at a cost exceeding 50% of the market value of the structure, or unless and until it is damaged by flood such that the cost to repair it to its pre-damage condition would equal or exceed 50% of the market value of the structure.

The landward limit of flood zone VE now extends landward of Estero Boulevard throughout a sizable part of the area of the Town that is identified on the Comprehensive Plan's Future Land Use Map as suitable for commercial

activities. This includes large areas of the "Pedestrian Commercial" and "Boulevard" FLUM categories along Estero Boulevard from the north end of Estero Island southeastward to the vicinity of the Chapel by the Sea. Implementation of the neighborhood design concepts of **Policy 1-A-3**, **Objective 4-A**, and **Policies 4-A-1** and **4-A-2** in conjunction with the floodproofing methodology encouraged in **Policy 4-E-4** will be frustrated by the NFIP-minimum flood protection requirements throughout flood zone VE. If the requested amendment were approved, no commercial uses would be specifically approved, but it would open the way for Town Council, following public hearings in the future, to decide whether to rezone property within the subject area to zoning districts that could be found consistent with the "Pedestrian Commercial" FLUM category. Commercial activities that could be allowed in the subject area following such a rezoning would either have to be adapted to fit the existing buildings, except to the extent the existing buildings could be altered without performing "substantial improvements," or be located in new or improved buildings that would be elevated to comply with the base flood elevation.

Conclusion:

Though the applicants seem to perceive the requested amendment as an overdue opportunity to regain the development rights they once had, the types of development that were allowed in the subject area under the Lee Plan after 1991, and the types of development that have been allowed in the subject area under the Town's comprehensive plan since 1999, without rezoning through the planned development process, are not significantly different. Nonetheless, the applicants' request has other merits of its own. The location of the subject area, between a parcel zoned for a park or a public parking lot, and an existing convenience food and beverage store in the Pedestrian Commercial FLUM category and in a commercial zoning district, supports the notion that the requested amendment would not of itself be an intrusion into a residential neighborhood. It is possible that a future zoning application could propose development of the subject area in a fashion that would intrude into the surrounding residential neighborhood, depending on its nature and intensity, but a future zoning application could do so in any case, regardless of the FLUM category in effect.

To be fair to the 2004 staff report and the concerns of the public at that time, the possibility of redeveloping the area of the 2004 request with buildings that could profitably house intense commercial uses such as restaurants or bars may have seemed more real prior to FEMA's revised Flood Insurance Rate Maps. If in the future none of the Town's conventional zoning districts were deemed compatible with the adjacent neighborhoods, the Town Council could freely decline to rezone to one of those districts. Instead the Town could allow the property owner to pursue planned development zoning.

Staff recommends that the Town Council **does amend** the Comprehensive Plan Future Land Use Map to change the designation of the subject area from “Mixed Residential” to “Pedestrian Commercial.” The recommendation is based upon the discussion and the Comprehensive Plan Goals, Objectives, and Policies recited above. Staff recommends the Town Council find that the requested amendment **is clearly in the public interest**, because it will allow future rezoning to consider allowing a mix of uses that would complement the current mix of residential, commercial, and civic uses in the immediate vicinity of the subject area.

ATTACHMENTS

Attachment A – Application

EXHIBITS

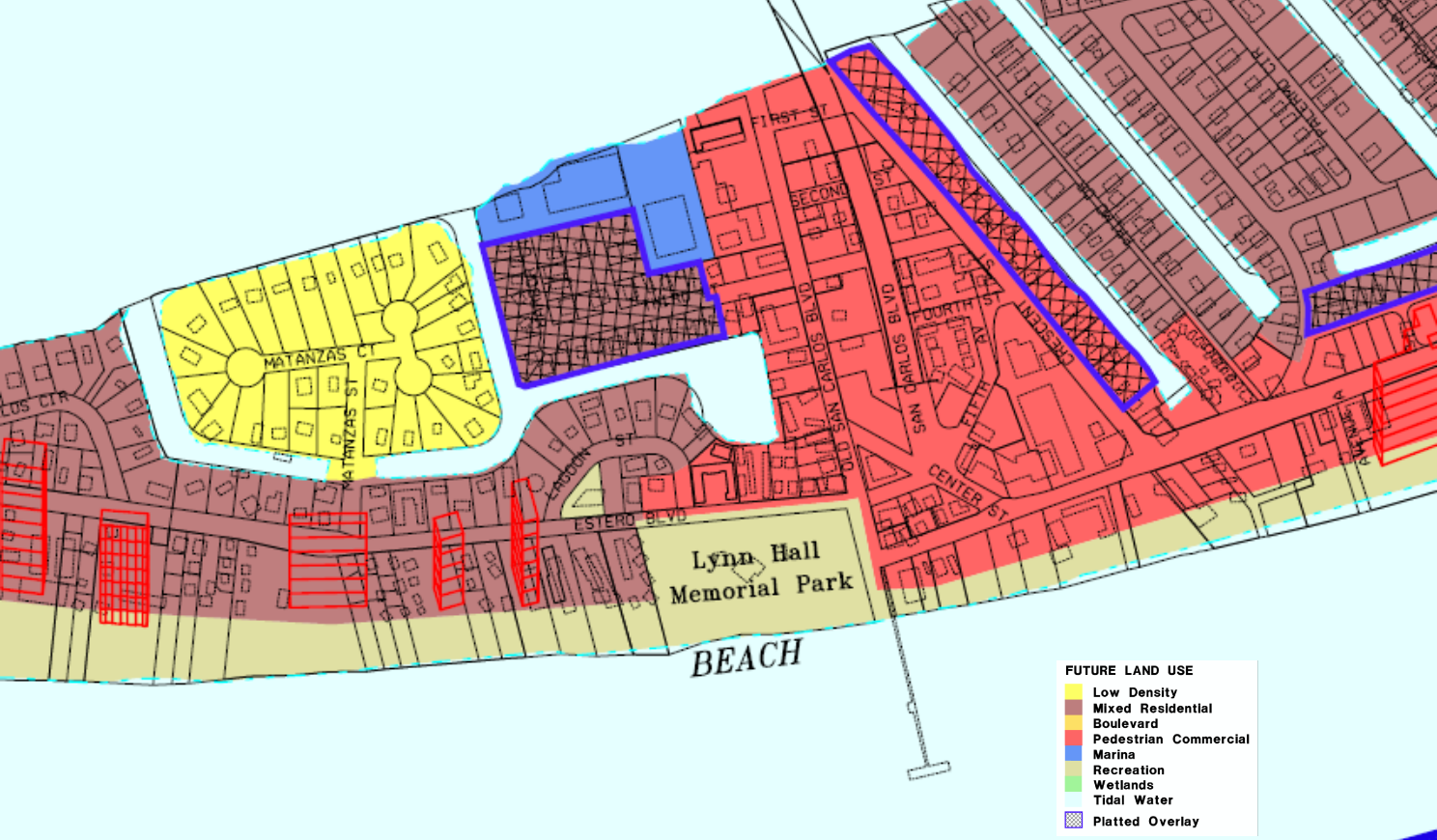
Exhibit A – Legal Description of property at 821 Estero Blvd
Exhibit B – Legal Description of property at 831 Estero Blvd

Exhibit A
821 Estero Boulevard

Lots 7 and 8, and the East 10 feet of Lot 9, together with the land lying between the Northern boundary of the aforementioned lots and Lagoon Street, being that portion of Lots 13 and 14 lying between an extension of the Southeasterly line of Lot 7 to Lagoon Street and an extension of a line parallel to and 10 feet Northwesterly from the Southeasterly line of Lot 9, running from Estero Boulevard to Northerly line of said Lot 9, thence extended to Lagoon Street; all being in Block B, ISLAND SHORES UNIT 2 SUBDIVISION, as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida.

Exhibit B
831 Estero Boulevard

Lots 5 and 6, Block B, ISLAND SHORES UNIT 2 SUBDIVISION, as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida.

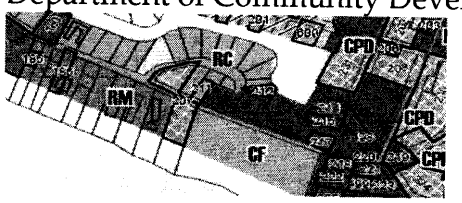

FIRST ST
SECOND ST
THIRD ST
FOURTH ST
FIFTH AV
CRESCENT
CENTER ST
SAN CARLOS BLVD
OLD SAN CARLOS BLVD
MATANZAS CT
MATANZAS ST
LOS CTR
LAGOON ST
ESTERO BLVD
Lynn Hall
Memorial Park
BEACH
FUTURE LAND USE
Low Density
Mixed Residential
Boulevard
Pedestrian Commercial
Marina
Recreation
Wetlands
Tidal Water
Platted Overlay

Case #_____
Planner_____

Date Received_____
Date of Sufficiency/Completeness_____

Town of Fort Myers Beach

Department of Community Development



Zoning Division

Town of Fort Myers Beach
DEC 18 2009
Received Community Devel
FCS

Application for Public Hearing

This is the first part of a two-part application. This part requests general information required by the Town of Fort Myers Beach for any request for a public hearing. The second part will address additional information for the specific type of action requested.

Project Name:	PURTELL / PAINE PLAN AMENDMENT
Authorized Applicant:	James F. Purtell, Patrick Purtell, Fred Paine
LeePA STRAP Number(s):	24-46-23-W3-0050B.0050
	24-46-23-W3-0050B.0070

Current Property Status:	
Current Zoning:	RC
Future Land Use Map (FLUM) Category:	MIXED RESIDENTIAL
Platted Overlay? ___yes X no	**FLUM Density Range:** 1 - 6 units per acre

	Action Requested	Additional Form Required
___	Special Exception	Form PH-A
___	Variance	Form PH-B
___	Conventional Rezoning	Form PH-C
___	Planned Development	Form PH-D
___	Master Concept Plan Extension	Form PH-E
___	Appeal of Administrative Action	Form PH-F
___	Development of Regional Impact	Schedule Appointment
X	Other (cite LDC section number: 34-92)	Attach Explanation

Town of Fort Myers Beach
Department of Community Development
2523 Estero Boulevard
Fort Myers Beach, FL 33931
(239) 765-0202

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

PART I – General Information

A. Applicant:

Name(s):	1. James F. Purtell & Patrick Purtell 2. Fred Paine
Address:	Street: 1. 831 Estero Blvd. 2. 821 Estero Blvd.
	City: Fort Myers Beach State: FL Zip Code: 33931
Phone:	
Fax:	
E-mail address:	1. joeypurtell@yahoo.com and iabzguy@ntd.net 2. fredpaine@aol.com

B. Relationship of applicant to property (check appropriate response)

[X]	Owner (indicate form of ownership below)	
	[X] Individual~~s (or husband/wife)~~	[ ] Partnership
	[ ] Land Trust	[ ] Association
	[ ] Corporation	[ ] Condominium
	[ ] Subdivision	[ ] Timeshare Condo
[ ]	Authorized representative (attach authorization(s) as Exhibit AA-1)	
[ ]	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)	
[ ]	Town of Fort Myers Beach (Date of Authorization:_____)	

C. Agent authorized to receive all correspondence:

Name:	KNOTT, CONSOER, EBELINI, HART & SWETT, P.A.
Mailing address:	Street: 1625 Hendry Street, Suite 301
	City: Fort Myers State: FL Zip Code: 33901
Contact Person:	Michael E. Roeder, AICP
Phone:	239-334-2722 Fax: 239-334-1446
E-mail address:	mroeder@knott-law.com

D. Other agents:

Name(s):	N/A
Mailing address:	Street:
	City: State: Zip Code:
Phone:	Fax:
E-mail address:	

Use additional sheets if necessary, and attach to this page.

PART II – Nature of Request

Requested Action (check applicable actions):

[ ] Special Exception for:
[ ] Variance for:
[ ] Conventional Rezoning from to:
[ ] Planned Development
[ ] Rezoning (or amendment) from to:
[ ] Extension/reinstatement of Master Concept Plan
[ ] Public Hearing of DRI
[ ] No rezoning required
[ ] Rezoning from to:
[ ] Appeal of Administrative Action
[x] Other (explain): FLUM amendment from Mixed Residential to Pedestrian Commercial

PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item
N/A	

PART IV – Property Ownership

[ ] **Single owner** (individual or husband and wife)
Name:
Address: Street:
City: State: Zip Code:
Phone: Fax:
E-mail Address:

[X] **Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)**
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

PART V – Property Information

A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
[X] Yes [ ] No
If yes:
Subdivision name:
Plat Book Number: 9 Page: 25 Unit: 2 Block: B Lot: 5 & 6;
If no: Lots 7, 8 and portions of 9, 13 & 14
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. 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.

C. STRAP Number(s):

24-46-23-W3-0050B.0070; 24-46-23-W3-0050B.0050

D Property Dimensions:

Area:	821: 9,600 831: 5,000	square feet		acres
Width along roadway:	821: 60 831: 50	feet	Depth: 821: 160 831: 100	feet

E. Property Street Address:

821 and 831 Estero Blvd., Fort Myers Beach, FL 33931

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

From Sky Bridge continue on San Carlos Boulevard to Estero Blvd., turn right and continue to 821 and 831 Estero Blvd. on the right just past Lagoon Street.
Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

[X] There are no deed restrictions or covenants on this property that affect this request.
[ ] Restrictions and/or covenants are attached as Exhibit 5-4
[ ] A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

Attach list of surrounding property owners (within 500 feet) as Exhibit 5-6
Attach two sets of mailing labels as Exhibit 5-7
Attach a map showing the surrounding property owners as Exhibit 5-8

I. Future Land Use Category: (see Comprehensive Plan Future Land Use Map)

[ ] Low Density	[ ] Marina
[X] Mixed Residential	[ ] Recreation
[ ] Boulevard	[ ] Wetlands
[ ] Pedestrian Commercial	[ ] Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? [ ] Yes [X] No	

J. Zoning: (see official zoning map, as updated by subsequent actions)

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

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

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

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature _____ FRED PAINE
Typed or Printed Name

State of Wisconsin
County of douglas

The foregoing instrument was sworn to (or affirmed) and subscribed

before me this 12/11/09 by Fred Paine
(date) (name of person under oath or affirmation)

who is personally known to me or produced _____
(type of identification)

as identification.

Signature of person administering oath _____ Dawn Ahlborg
Typed or Printed Name

SEAL:

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM

STRAP# 24-46-23-W3-0050B.0070

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. 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
FRED PAINE	100%
823 Lagoon Street	
Fort Myers Beach, FL 33931	

2. 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

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

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

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

Name, Address, and Office (if applicable)	Percentage

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

Name and 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 public hearing, 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 _____
Applicant

Fred Paine
Printed or typed name of applicant

STATE OF Wisconsin
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 11 day of December, 20 09, by Fred Paine, who is personally known to me or who has produced _____ as identification and who did (or did not) take an oath.

_____
Signature of Notary

Dawn Ahlborg
Typed or Printed Name of Notary

SEAL:

EXHIBIT AA-1

LETTER OF AUTHORIZATION

TO FORT MYERS BEACH COMMUNITY DEVELOPMENT

The undersigned does hereby swears or affirms that he is the owner of record of property commonly known as ***821 Estero Boulevard, Fort Myers Beach, FL 33931*** *(Strap* ***#24-46-23-W3-0050B.0070****) and legally described as:*

Island Shores Subdivision, Unit 2, Block B, Lots 7 & 8 and portions of Lots 9, 13 & 14, as recorded in Plat Book 9, Page 25 of the records of Lee County.

The property described herein is the subject of a comprehensive plan amendment request. I hereby designate ***Knott, Consoer, Ebelini, Hart & Swett, P.A.*** *as the authorized representative for the property owner regarding the aforesaid plan amendment.*

(Signature) *Owner*

Fred Paine
Printed Name

STATE OF Wisconsin
COUNTY OF Douglas

Sworn to (or affirmed) and subscribed before me this 11 day of December, 2009, by **Fred Paine** who is personally known to me or who has produced _____ as identification.

Notary Public
Dawn Ahlborg
(Name typed, printed or stamped)

(SEAL)

ZDS0103 Rev.04
3/01/97 Y2K 1/03/2000

Case #_____
Planner_____

Date Received_____
Date of Sufficiency/Completeness_____

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

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

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

James F. Purtell
Signature

JAMES F. PURTELL
Typed or Printed Name

State of FLORIDA
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 12/11/09 (date) by JAMES F. PURTELL (name of person under oath or affirmation) who is personally known to me or produced FLDL P631-446-49-068-0 (type of identification) as identification.

Signature of person administering oath

PATRICIA TARDIFF
Typed or Printed Name

PATRICIA F. TARDIFF
Notary Public - State of Florida
My Commission Expires Mar 27, 2012
Commission # DD 763332
SEAL

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM

STRAP# 24-46-23-W3-0050B.0050

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. 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
JAMES F. PURTELL	66.66%
831 Estero Blvd.	
Fort Myers Beach, FL 33931	
PATRICK PURTELL	33.33%
831 Estero Blvd.	
Fort Myers Beach, FL 33931	

2. 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

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

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

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

Name, Address, and Office (if applicable)	Percentage

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

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

Name and 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 public hearing, 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 James F. Purtell
Applicant

JAMES F. PURTELL
Printed or typed name of applicant

STATE OF FL
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 11 day of December, 2009, by James F. Purtell, who is personally known to me or who has produced FL DL P634-446-49-068-0 as identification and who did (or did not) take an oath.

Signature of Notary

Patricia Tardiff
Typed or Printed Name of Notary

SEAL:

PATRICIA F. TARDIFF
Notary Public - State of Florida
My Commission Expires Mar 27, 2012
Commission # DD 763332

EXHIBIT AA-1

LETTER OF AUTHORIZATION

TO FORT MYERS BEACH COMMUNITY DEVELOPMENT

The undersigned does hereby swears or affirms that he is the owner of record of property commonly known as ***821 Estero Boulevard, Fort Myers Beach, FL 33931*** *(Strap* ***#24-46-23-W3-0050B.0050****) and legally described as:*

Island Shores Subdivision, Unit 2, Block B, Lots 5 & 6, as recorded in Plat Book 9, Page 25 of the records of Lee County.

The property described herein is the subject of a comprehensive plan amendment request. I hereby designate ***Knott, Consoer, Ebelini, Hart & Swett, P.A.*** *as the authorized representative for the property owner regarding the aforesaid plan amendment.*

James F. Purtell
(Signature) *Owner*

James F. Purtell
Printed Name

STATE OF Florida
COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 11 day of December, 2009, by **James F. Purtell** who is personally known to me or who has produced FLDL P634-446-49 - as identification.

068-0
Notary Public

(SEAL)

Patricia Tardiff
(Name typed, printed or stamped)

PATRICIA F. TARDIFF
Notary Public - State of Florida
My Commission Expires Mar 27, 2012
Commission # DD 763332

ZDS0103 Rev.04
3/01/97 Y2K 1/03/2000

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

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

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town 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 supplemental matter attached hereto and made a part of this application are honest and true;
3. I hereby authorize Town staff or their designee(s) to enter upon the property during normal working hours (including Saturdays and Sundays) for purposes reasonably related to the subject matter of this application; and
4. The property will not be transferred, conveyed, sold, or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature — PATRICK PURTELL (Typed or Printed Name)

State of WI
County of Winnebago

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 12-1-09 (date) by PATRICK PURTELL (name of person under oath or affirmation), who is personally known to me or produced a drivers license (type of identification) as identification.

Erin Vacheresse — Signature of person administering oath

Erin Vacheresse — Typed or Printed Name

SEAL: NOTARY PUBLIC ERIN VACHERESSE STATE OF WISCONSIN

lop 12/4/2011

Case #_____ Date Received_____
Planner_____ Date of Sufficiency/Completeness_____

EXHIBIT 4-1
DISCLOSURE OF INTEREST FORM

STRAP# 24-46-23-W3-0050B.0050

Attach additional sheets in the same format for each separate STRAP number in the application if multiple parcels with differing ownership are included.

1. 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
JAMES F. PURTELL	66.66%
831 Estero Blvd.	
Fort Myers Beach, FL 33931	
PATRICK PURTELL	33.33%
831 Estero Blvd.	
Fort Myers Beach, FL 33931	

2. 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

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

Name and 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 public hearing, 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 _____
Applicant

PATRICK PURTELL
Printed or typed name of applicant

STATE OF WI
COUNTY OF Winnebago

The foregoing instrument was acknowledged before me this 11th day of December, 2009, by Patrick Purtell who is personally known to me or who has produced a drivers license as identification and who did (or did not) take an oath.

Erin Vacheresse
Signature of Notary

Erin Vacheresse
Typed or Printed Name of Notary

SEAL:

NOTARY PUBLIC
ERIN VACHERESSE
STATE OF WISCONSIN

exp 12/14/2011

EXHIBIT AA-1

LETTER OF AUTHORIZATION

TO FORT MYERS BEACH COMMUNITY DEVELOPMENT

The undersigned does hereby swears or affirms that he is the owner of record of property commonly known as ***871 Estero Boulevard, Fort Myers Beach, FL 33931*** *(Strap* ***#24-46-23-W3-0050B.0050)*** *and legally described as:*

Island Shores Subdivision, Unit 2, Block B, Lots 5 & 6, as recorded in Plat Book 9, Page 25 of the records of Lee County.

The property described herein is the subject of a comprehensive plan amendment request. I hereby designate ***Knott, Consoer, Ebelini, Hart & Swett, P.A.*** *as the authorized representative for the property owner regarding the aforesaid plan amendment.*

(Signature) *Owner*

Patrick Purtell
Printed Name

STATE OF WI
COUNTY OF Winnebago

Sworn to (or affirmed) and subscribed before me this 11th day of December, 2009, by **Patrick Purtell** who is personally known to me or who has produced a drivers license as identification.

Erin Vacheresse
Notary Public
Erin Vacheresse
(Name typed, printed or stamped)

NOTARY PUBLIC
(SEAL) ERIN VACHERESSE
STATE OF WISCONSIN

exp 12/4/2011

ZDS0103 Rev.04
3/01/97 Y2K 1/03/2000

FORT MYERS BEACH

NARRATIVE FOR COMPREHENSIVE PLAN AMENDMENT

This is a request to amend the Future Land Use Map for two properties located at 831 and 821 Estero Boulevard (24-45-23-W3-0050B.0050 and 24-45-23-W3-0050B.0070, respectively). The properties are currently in the Mixed Residential land use category, and the request is to change this designation to the Pedestrian Commercial land use category. This request is supported by the history and the location of the two properties, especially when considered in light of the Comprehensive Plan for the Town of Fort Myers Beach.

These properties front on Estero Boulevard, almost directly across from Lynn Hall Park and the Public Beach. Immediately to the southeast on the same block is a 7-Eleven store which is in the Pedestrian Commercial Land Use Category and is zoned "Downtown". To the northwest on the same block is a parcel zoned "CPD" for a public parking lot. Both of the subject properties were originally zoned BU-1 in 1962 under the Lee County zoning regulations, and both properties were zoned C-1 (as converted in 1978) when the Applicants purchased them in 1997 and 2001, respectively. The C-1 zoning allowed for a wide variety of commercial activities, and was a new Commercial category when the County zoning regulations changed in 1978. On January 1, 1999, the new Comprehensive Plan for the Beach was adopted, which changed the land use designation for this property from "Urban Community" to "Mixed Residential." However, the C-1 zoning still remained.

Having purchased these properties with commercial C-1 zoning in place, the Applicants were surprised and disappointed to learn that the Town was planning to change the zoning to "Residential Conservation" in 2003 as part of the complete revision of the Town's zoning map. Both Applicants objected to this change at the public hearing for this ordinance on February 3, 2003, and at that time, the Town Council indicated that the staff should explore some relief for properties which previously had Commercial zoning. An amendment to the Comprehensive Plan would be a necessary first step to correct the zoning.

On April 15, 2003, Bill Spikowski submitted a memo and made a presentation to the LPA regarding alternative approaches for small scale plan amendments. However, after considerable discussion, the LPA agreed to recommend that the Council allow small scale amendments for those property owners who had lost commercial zoning in the last amendment to the zoning map. On June 2, 2003, the Town Council directed staff to accept small scale plan amendments from those property owners whose zoning had been changed from Commercial to Residential in the recent amendments. An application to amend the Comprehensive Plan for the two subject properties and additional neighboring properties was filed in July of that year. After considerable delay in processing the request, the amendment was denied the following April by a Council with a different membership after the election of 2004 on a two-to-two vote.

While that application included some properties that did not front on Estero Boulevard, those properties have been excluded from the current request.

These two properties are a logical extension of the Times Square Pedestrian Commercial designation, and are ideally situated for a variety of small scale commercial or short term vacation rentals that could benefit from their location near Lynn Hall Park and Times Square. They are not suitable for permanent residential use for these same reasons, and there was a serious question as to the logic of placing these properties in a Residential Conservation district and depriving them of their original Commercial zoning in 2003.

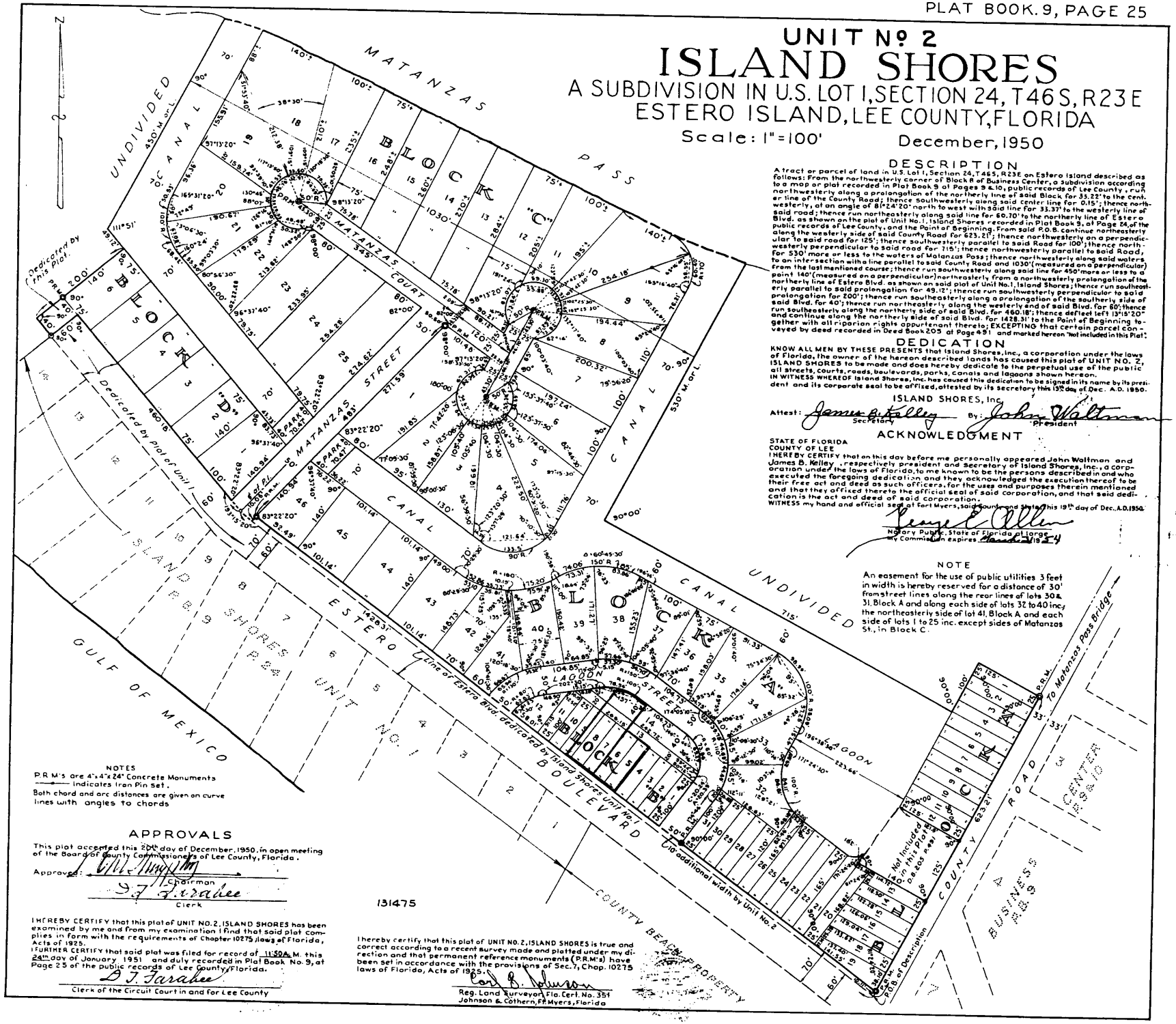
This amendment is consistent with Goal 4, Objective 4-A, Policy 4-A-1, Policy 4-A-2, Policy 4-A-4, all of which speak to the desirability of maintaining the pedestrian orientation of Fort Myers Beach and its convenient pedestrian access to the beach. It is also the Applicants' position that these properties are more consistent with Policy 4-B-6, the definition of Pedestrian Commercial, than Policy 4-B-4, the definition of Mixed Residential. Again, the location adjacent to Times Square and Lynn Hall Park and fronting Estero Boulevard more readily lends itself to this Pedestrian Commercial designation which would enhance the attractiveness and variety of the pedestrian environment in the Times Square area. The Pedestrian Commercial designation would allow for a wider range of commercial uses and a slightly higher density formula for hotel/motel use.

The request is consistent with Policy 4-C-10 which states that the Map can be amended if such increases "are clearly in the public interest, not just in the private interest of a petitioning landowner." Allowing these properties to develop consistent with the Pedestrian Commercial designation would be in the Town's interest, since they are adjacent to Times Square and Lynn Hall Park and thus would enhance the options for residents and visitors to the beach. In addition, there is a certain equity involved in that these properties had commercial zoning when the current owners purchased them, and approval of this request would allow the potential to regain the land use entitlement that was eliminated by the Town in 2003. This amendment would also facilitate the eventual redevelopment of the property to take better advantage of its location in the future.

It is not possible to usefully analyze the impacts of this amendment prior to any final zoning approval. Specific development plans would accompany any request for rezoning, and given the small size of the property, slightly more than one-third of an acre, it is not likely that anything too intense could be constructed on the site. There is already adequate utility provision, and to the extent that any new development would encourage pedestrian activity, additional transportation impacts should be negligible. However, until a specific plan is submitted for zoning, it is not possible or necessary to analyze potential changes in use.

UNIT Nº 2
ISLAND SHORES
A SUBDIVISION IN U.S. LOT 1, SECTION 24, T46S, R23E
ESTERO ISLAND, LEE COUNTY, FLORIDA

Scale: 1" = 100' December, 1950



DESCRIPTION

A tract or parcel of land in U.S. Lot 1, Section 24, T46S, R23E on Estero Island described as follows: From the northwesterly corner of Block B of Business Center, a Subdivision according to a map or plat recorded in Plat Book 9 at Pages 9 & 10, public records of Lee County, run northwesterly along a prolongation of the northerly line of said Block for 33.22' to the center line of the County Road; thence southwesterly along said center line for 0.15'; thence northwesterly, at an angle of 81°24'20" north to west with said line for 33.37' to the westerly line of said road; thence run northeasterly along said line for 60.70' to the northerly line of Estero Blvd. as shown on the plat of Unit No. 1, Island Shores recorded in Plat Book 9, at Page 24, of the public records of Lee County, and the Point of Beginning. From said P.O.B. continue northeasterly along the westerly side of said County Road for 623.21'; thence northwesterly on a perpendicular to said road for 125'; thence southwesterly parallel to said Road for 100'; thence northwesterly perpendicular to said road for 715'; thence northwesterly parallel to said Road, for 530' more or less to the waters of Matanzas Pass; thence northwesterly along said waters to an intersection with a line parallel to said County Road and 1030' (measured on a perpendicular) from the last mentioned course; thence run southwesterly along said line for 450' more or less to a point 140' (measured on a perpendicular) northeasterly from a northwesterly prolongation of the northerly line of Estero Blvd. as shown on said plat of Unit No. 1, Island Shores; thence run southeasterly parallel to said prolongation for 49.12'; thence run southwesterly perpendicular to said prolongation for 200'; thence run southeasterly along a prolongation of the southerly side of said Blvd. for 40'; thence run northeasterly along the westerly end of said Blvd. for 60'; thence run southeasterly along the northerly side of said Blvd. for 460.18'; thence deflect left 13°18'20" and continue along the northerly side of said Blvd. for 1428.31' to the Point of Beginning together with all riparian rights appurtenant thereto; EXCEPTING that certain parcel conveyed by deed recorded in Deed Book 205 at Page 491 and marked hereon "Not included in this Plat".

DEDICATION

KNOW ALL MEN BY THESE PRESENTS that Island Shores, Inc., a corporation under the laws of Florida, the owner of the hereon described lands has caused this plat of UNIT NO. 2, ISLAND SHORES to be made and does hereby dedicate to the perpetual use of the public all streets, courts, roads, boulevards, parks, canals and lagoons shown hereon.

IN WITNESS WHEREOF Island Shores, Inc. has caused this dedication to be signed in its name by its president and its corporate seal to be affixed, attested by its secretary this 13th day of Dec. A.D. 1950.

ISLAND SHORES, Inc.

Attest: James B. Kelley, Secretary By: John Waltman, President

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day before me personally appeared John Waltman and James B. Kelley, respectively president and Secretary of Island Shores, Inc., a corporation under the laws of Florida, to me known to be the persons described in and who executed the foregoing dedication and they acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned and that they affixed thereto the official seal of said corporation, and that said dedication is the act and deed of said corporation.

WITNESS my hand and official seal at Fort Myers, said County and State this 19th day of Dec. A.D. 1950.

George E. Allen
Notary Public, State of Florida at Large
My Commission expires March 19, 1954

NOTE

An easement for the use of public utilities 3 feet in width is hereby reserved for a distance of 30' from street lines along the rear lines of lots 30 & 31, Block A and along each side of lots 32 to 40 inc., the northeasterly side of lot 41, Block A and each side of lots 1 to 25 inc. except sides of Matanzas St., in Block C.

NOTES

P.R.M.'s are 4"x4"x24" Concrete Monuments
—•— indicates Iron Pin Set.
Both chord and arc distances are given on curve lines with angles to chords

APPROVALS

This plat accepted this 20th day of December, 1950, in open meeting of the Board of County Commissioners of Lee County, Florida.

Approved: [illegible] Chairman
D. T. Tarabee, Clerk

131475

I HEREBY CERTIFY that this plat of UNIT NO. 2, ISLAND SHORES has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275 laws of Florida, Acts of 1925.

I FURTHER CERTIFY that said plat was filed for record at 11:50 A.M. this 24th day of January 1951 and duly recorded in Plat Book No. 9, at Page 25 of the public records of Lee County, Florida.

D. T. Tarabee
Clerk of the Circuit Court in and for Lee County

I hereby certify that this plat of UNIT NO. 2, ISLAND SHORES is true and correct according to a recent survey made and platted under my direction and that permanent reference monuments (P.R.M.'s) have been set in accordance with the provisions of Sec. 7, Chap. 10275 laws of Florida, Acts of 1925.

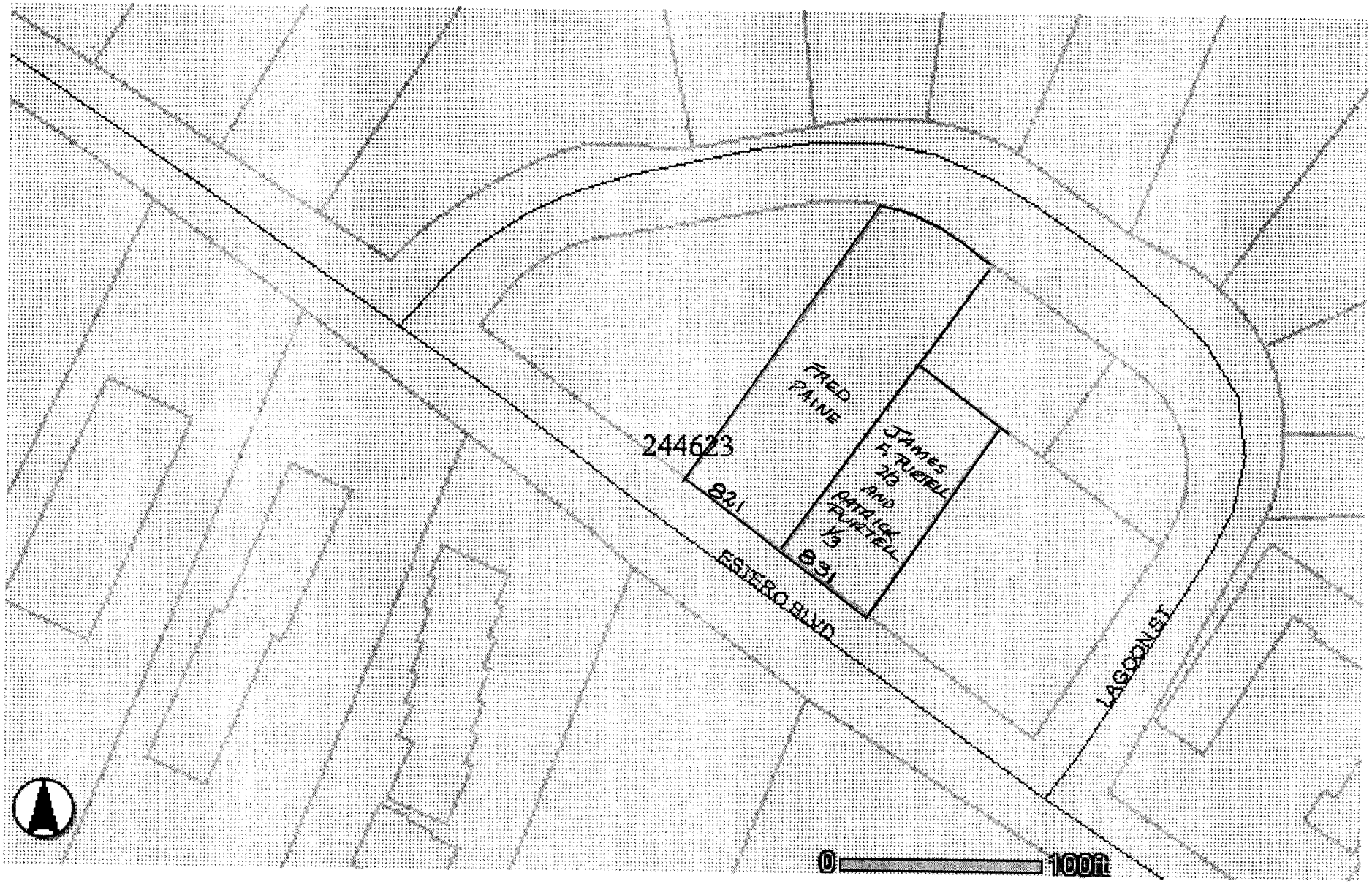
Carl B. Johnson
Reg. Land Surveyor, Fla. Cert. No. 351
Johnson & Cothern, Ft. Myers, Florida

EXHIBIT 4-2

LIST OF PROPERTY OWNERS

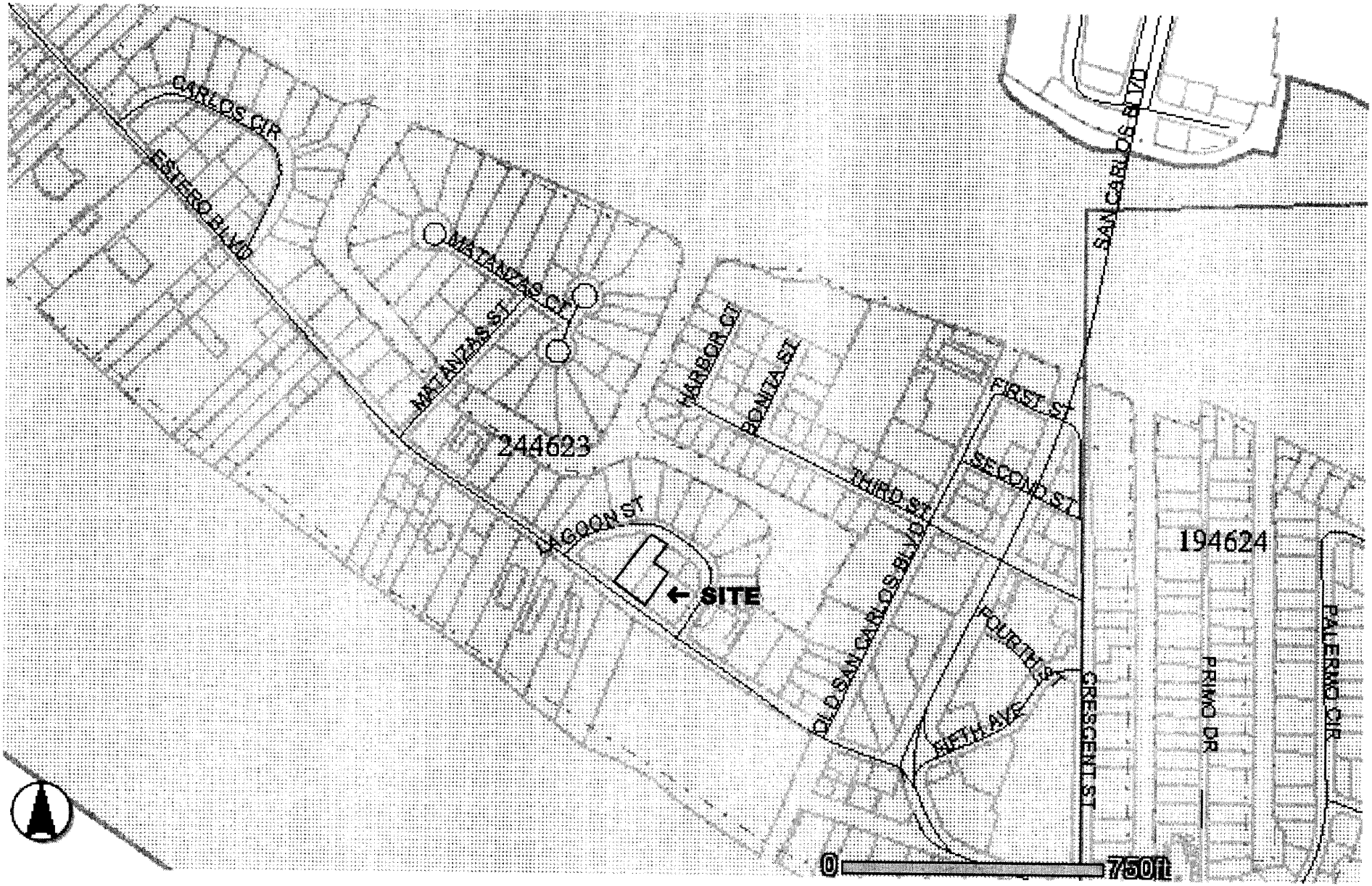
Name & Address	Subject Property	
FRED PAINE 823 Lagoon St. Fort Myers, FL 33931	Address: Strap No: Legal:	821 Estero Blvd., Fort Myers Beach, FL 33931 24-46-23-W3-0050B.0070 Island Shores, Unit 2, Block B, Plat Book 9, Page 25, Lots 7, 8 and portion of Lots 9, 13 and 14
JAMES F. PURTELL (as to 2/3 interest) and PATRICK PURTELL (as to 1/3 interest) 831 Estero Blvd. Fort Myers, FL 33931	Address: Strap No: Legal:	831 Estero Blvd., Fort Myers Beach, FL 33931 24-46-23-W3-0050B.0050 Island Shores, Unit 2, Block B, Plat Book 9, Page 25, Lots 5 and 6

EXHIBIT 4-3



Property Owners Map

EXHIBIT 5-3



Area Location Map

EXHIBIT 5-6

Lee County Property Appraiser

Kenneth M. Wilkinson, C.F.A.

GIS Department / Map Room

Phone: (239) 533-6159 • Fax: (239) 533-6139 • eMail: MapRoom@LeePA.org

VARIANCE REPORT

Date of Report: December 16, 2009
Buffer Distance: 500 ft
Parcels Affected: 100
Subject Parcel: 24-46-23-W3-0050B.0050, 24-46-23-W3-0050B.0070

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
LEE COUNTY PO BOX 398 FORT MYERS FL 33902	**24-46-23-W3-00023.0000** 950/81 ESTERO BLVD/OLD SAN CARLO BLVD FORT MYERS BEACH FL 33931	BEG NW COR BLK 8 BUSINESS CTR SUB RUN NWLY ALG EXTEN NLI PIER ON 22.0000	1
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-00024.0000** 201 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	FROM NWLY COR BLK 8 BUSINESS CENTER SUBD RUN NWLY ALG PROLONGATION OF	2
HORN GWEN 17557 INGRAM RD FORT MYERS FL 33967	**24-46-23-W3-0030A.0050** 923 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK A PB 9 PG 40 LOT 5	3
HOULIHAN MAURICE + MARY 917 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030A.0060** 917 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.A PB 9 PG 40 LOT 6	4
GOMPEL MARIAN D 911 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030A.0070** 911 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.A PB 9 PG 40 LOT 7	5
CASEY KATHLEEN M + 110 LOVE LN NORWOOD PA 19074	**24-46-23-W3-0030A.0080** 901 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.A PB 9 PG 40 LOT 8	6
TOMAIOLO FRANKLIN L + GLORIA J 934 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0020** 934 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 2	7
SCHULZ AXEL + CORNELIA 926 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0030** 932 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOTS 3 + 4	8
CLAYTON KATHRYN BEBEANNE TR 920 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0050** 920 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 5	9
FOSTER RUTH TR 914 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0060** 914 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 6	10
TYRELL PETER 1/2 + 17 RANELAGH RD HEMEL HEMPSTEAD HERTFORDSHIRE HP2 4RU UNITED KINGDOM	**24-46-23-W3-0030B.0070** 910 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 7	11
LEWIS GARY A + JEANNE M 880 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0080** 880 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 8	12
LEBO KENNETH + LORRAINE 870 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0090** 870 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 9	13
GALT CHRISTIAN 2277 TRADE CENTER WAY STE 102 NAPLES FL 34109	**24-46-23-W3-0030B.0100** 850 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 10	14

All data is current at time of printing and subject to change without notice.

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
HANZL MILDRED 820 THIRD ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0110** 820 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 11	15
SCHMELING ROBERT W TR 1621 SE 84TH CT VANCOUVER WA 98664	**24-46-23-W3-0030B.0120** 810 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 12	16
SCHMELING ROBERT W + 15210 NE 81ST WAY VANCOUVER WA 98682	**24-46-23-W3-0030B.0130** 800 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 13	17
SWING THOMAS J TR 1668 COPPERLEAF COVE OVIEDO FL 32766	**24-46-23-W3-0030B.0140** 401 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 14	18
MARTIN WALTER + CHERYL 2610 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-0030B.0150** 405 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.B PB 9 PG 40 LOT 15	19
SERVADIO NORMA L TR + 10 SAGAMORE DR SIMSBURY CT 06070	**24-46-23-W3-0030B.0160** 409 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 16	20
SERVADIO NORMA L TR 10 SAGAMORE DR SIMSBURY CT 06070	**24-46-23-W3-0030B.0170** 425 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK B PB 9 PG 40 LOT 17	21
NASH ERNEST + EVELYN 1/2 + 270 KINGS RD MADISON NJ 07940	**24-46-23-W3-0030C.0010** 851-861 THIRD ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.C PB 9 PG 40 LOT 1	22
KIESEL CHARLES J + LENORA 431 BONITA ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0030C.0020** 431 BONITA ST FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK C PB9 PG 40 BLK C LT 2 + 3	23
JAMES RONALD L JR 422 HARBOR CT FORT MYERS BEACH FL 33931	**24-46-23-W3-0030C.0090** 422 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.C PB 9 PG 40 LOT 9	24
SCOTT EDWARD W + B GAYLE + 412 HARBOR CT FORT MYERS BEACH FL 33931	**24-46-23-W3-0030C.0100** 412 HARBOR CT FORT MYERS BEACH FL 33931	MATANZAS VIEW BLK.C PB 9 PG 40 LOT 10	25
FIRST CENTRAL INVESTMENT CORP BLUEMARK CAPITAL LLC 205 W 4TH ST STE 1100 CINCINNATI OH 45202	**24-46-23-W3-00400.0010** 830 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 1 PB 9 PG 24 LOT 1	26
HOELZEL INCORPORATED CHRIS HOELZEL PO BOX 70913 BETHESDA MD 20813	**24-46-23-W3-00400.0050** 764 ESTERO BLVD #68 FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 1 PB 9 PG 24 ELY 67.42 FT LOT 5	27
ETCHISON P B + CAROLYN + 200 GREEN RD ALPHARETTA GA 30004	**24-46-23-W3-00400.006A** 754 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 1 PB 9 PG 24 PT LOT 5 + PT LOT 6	28
MOLLER REGINA P 1400 SIENA AVE CORAL GABLES FL 33146	**24-46-23-W3-00400.006B** 756 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 1 PB 9 PG 24 PT LOTS 5 + 6 FR NW COR OF	29
SCHMITT MARJORIE A TR 575 CARLOS CT FORT MYERS BEACH FL 33931	**24-46-23-W3-00400.006C** 758 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 1 PB 9 PG 24 THE E 33.72 FT OF THE S	30
RICHARD JOHN W TR 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0080** 237 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOTS 3 THRU 12 + VAC LAGOON R/W OR2858/1391 + OR2660/2863 +2736/3702	31
HVAC SYSTEM DESIGN INC. GEORGE PELLEGRINO 311 PALMERO CIR FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0130** 185 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 13 + PT LOT 14	32
MAY S E PO BOX 61176 FORT MYERS FL 33906	**24-46-23-W3-0050A.0140** 163 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 PT LOT 14 + LOT 15	33

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
JENKINS GEORGE D L PO BOX 280 TILLSONBURG ON N4G 4H5 CANADA	**24-46-23-W3-0050A.016A** 159/61 OLD SAN CARLOS BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOTS 16 + PT OF LT 17	34
KEELER VIOLET RUTH TR 16243 CHARLESTON AVE FORT MYERS FL 33908	**24-46-23-W3-0050A.018B** 959/963 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PT LOTS 17 18 + 19	35
925 ESTERO BLVD LLC 4666 MAIN ST BRIDGEPORT CT 06606	**24-46-23-W3-0050A.0200** 925 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 LOTS 20 THRU 22	36
925 ESTERO BLVD LLC 4666 MAIN ST BRIDGEPORT CT 06606	**24-46-23-W3-0050A.0230** 925 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UT 2 BLK A PB 9 PG 25 LOTS 23 THRU 26	37
HOLBROOK LESLIE E + 5353 ST ROUTE 288 GALION OH 44833	**24-46-23-W3-0050A.032A** 859 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 NWLY 40 FT LOT 32	38
PURTELL KEVIN G + JON R GUILES PO BOX 2706 FORT MYERS BEACH FL 33932	**24-46-23-W3-0050A.0330** 855 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 33	39
ARTRIP CHARLES J + BARBARA K 851 LAGOON ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0340** 849 LAGOON ST #51 FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 34	40
SMITH RICHARD P 843 LAGOON ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0350** 843 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UT 2 BLK A PB 9 PG 25 LOT 35	41
BRAUCH TORRIN MAC TR 841 LAGOON ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0360** 839/841 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 36	42
JANNELLI FRANK L + 954 CLARELLEN DR FORT MYERS FL 33919	**24-46-23-W3-0050A.0370** 831 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 37	43
PAINE FREDERICK L + NANCY KAY 12 BELKNAP SHORES SUPERIOR WI 54880	**24-46-23-W3-0050A.0380** 823 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 LOT 38	44
PAINE FREDERICK L + NANCY K 819 LAGOON ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0390** 819 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 LOT 39	45
TOWN OF FORT MYERS BEACH 2523 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.0400** 815 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 PT LOTS 40 + 41	46
EDGEWATER INN LLC 264 AVALON GARDENS DR NANUET NY 10954	**24-46-23-W3-0050A.0420** 781 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 PT LOTS 40 + 41 + LOT 42	47
VANFOSSEN JAMES D + TERRI D 724 MATANZAS CT FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.043A** 775 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 ELY 67.42 FT LOT 43	48
VANFOSSEN DANNY + GRACE L/E+ 749 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-0050A.043B** 749 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.A PB 9 PG 25 WLY 33.72 FT LOT 43 + ELY 33.72 FT LOT 44	49
SMITH + THOMAS LLC 1674 W SMITH VALLEY RD GREENWOOD IN 46142	**24-46-23-W3-0050A.0440** 739 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK A PB 9 PG 25 WLY 67.42 FT LOT 44	50
SOUTHLAND CORPORATION CORPORATE TAX DEPT PO BOX 711 DALLAS TX 75221	**24-46-23-W3-0050B.0010** 841 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.B PB 9 PG 25 LOTS 1 THRU 4	51
PAINE FREDERICK L + NANCY KAY 12 BELKNAP SHORES SUPERIOR WI 54880	**24-46-23-W3-0050B.0100** 815 ESTERO BLVD FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK B PB 9 PG 25 LTS 10 THRU 12 + PT LTS 9 13 + 14	52

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
ARTRIP CHARLES J + BARBARA K 850 LAGOON ST FORT MYERS BEACH FL 33931	**24-46-23-W3-0050B.013A** 850 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK B PB 9 PG 25 PT LOTS 13 + 14	53
BOWAN JAMES J TR 11715 W HOWARD AVE MILWAUKEE WI 53228	**24-46-23-W3-0050B.013B** 846/848 LAGOON ST FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.B PB 9 PG 25 LOTS PT 13 + 14 FROM SE	54
PARSONS DANIEL + 1831 MAPLE GLEN RD SACRAMENTO CA 95864	**24-46-23-W3-0050C.0030** 720 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK C PB 9 PG 25 LOT 3	55
VANFOSSEN JAMES D + TERRI D 724 MATANZAS CT FORT MYERS BEACH FL 33931	**24-46-23-W3-0050C.0040** 724 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.C PB 9 PG 25 LOT 4	56
HILL BERNARD + MARIE PO BOX 312 GOODRICH MI 48438	**24-46-23-W3-0050C.0050** 730 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK.C PB 9 PG 25 LOT 5	57
EHRLICH REBECCA E 35 WOODLAND DR LITTLE FALLS NJ 07424	**24-46-23-W3-0050C.0060** 740 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK C PB 9 PG 25 LOT PT 6	58
DUNIPACE JANETTE M 738 MATANZAS CT FORT MYERS BEACH FL 33931	**24-46-23-W3-0050C.006A** 738/736 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK C PB 9 PG 25 LOT PT 6	59
YOUNG DOUGLAS E + STACEY J 308 LAKESHORE DR WASHINGTON IL 61571	**24-46-23-W3-0050C.0070** 750 MATANZAS CT FORT MYERS BEACH FL 33931	ISLAND SHORES UNIT 2 BLK C PB 9 PG 25 LOT 7	60
SAND CASTLE BEACH CLUB CONDO 905 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-02500.00CE** HDR: SAND CASTLE FORT MYERS BEACH FL 33931	SAND CASTLE BEACH CLUB A TIME-SHARE COMMOM AREA DESC OR 1463 PG 2328 + CPB 6 PG 230	61
SAND CASTLE BEACH CLUB 905 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-02500.1010** 905 ESTERO BLVD FORT MYERS BEACH FL 33931	SAND CASTLE BEACH CLUB A TIME-SHARE OR1463-2328 UNITS 101-215 / 29 UNITS	62
ROYAL BEACH CLUB CONDO ASSN 800 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-02900.0010** 800 ESTERO BLVD #1 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO A TIME-SHARE OR1530-1352 UNITS 1-17 / 16 UNITS	63
ROYAL BEACH CLUB CONDO 800 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-02900.00CE** 802 ESTERO BLVD FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO A TIME-SHARE COMMON AREA DESC OR 1530 PG 1352 + CPB 7 PG 133	64
ROYAL BEACH CLUB CONDO PH II 800 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-03200.00CE** HDR: ROYAL BCH CLB FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH II COMMOM AREA DESC OR1530/1352 + OR1716/4172 + CPB 7 PG 133 + CPB 8 PG 56	65
LAWRANCE DAVID J 1/2 INT + 823 HIDDEN LN EXCELSIOR MN 55331	**24-46-23-W3-03200.1010** 800 ESTERO BLVD #101 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 101	*66
VEHAR KEVIN K + 6143 RIVERA LN NEW PORT RICHEY FL 34655	**24-46-23-W3-03200.1020** 800 ESTERO BLVD #102 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 102	*66
COOPER KENT + CONSTANCE 320 BLOOMINTON ST GREENCASTLE IN 46135	**24-46-23-W3-03200.1030** 800 ESTERO BLVD #103 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PH 1352 UNIT 103	*66
FISK DAN + DEBORAH T 8973 KNOBLE CT EDEN PRAIRIE MN 55347	**24-46-23-W3-03200.1040** 800 ESTERO BLVD #104 FORT MYERS BEACH FL 33931	ROAYL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 104	*66
FREIER SHIRLEY 50% + 4811 W KNOLLWOOD DR RACINE WI 53403	**24-46-23-W3-03200.1050** 800 ESTERO BLVD #105 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 105	*66

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LEBO E CHARLES JR + SUSAN M 6202 N DELAWARE ST INDIANAPOLIS IN 46220	**24-46-23-W3-03200.1060** 800 ESTERO BLVD #106 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 106	*66
CHRISTLIEB A RICHARD + SHIRLEY 11039 SEA TROPIC LN FORT MYERS FL 33908	**24-46-23-W3-03200.1070** 800 ESTERO BLVD #107 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 107	*66
CHRISTLIEB A RICHARD + SHIRLEY 11039 SEA TROPIC LN FORT MYERS FL 33908	**24-46-23-W3-03200.1080** 800 ESTERO BLVD #108 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 108	*66
WALSH JAMES F + JANET M 2536 KENNELLY DR WILLOUGHBY OH 44094	**24-46-23-W3-03200.1090** 800 ESTERO BLVD #109 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 109	*67
ANDREW NICK J 3012 DEERPATH DR JOLIET IL 60435	**24-46-23-W3-03200.1100** 800 ESTERO BLVD #110 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 110	*67
ROEGNER DONALD L + MARLYS A 3504 WALTON WAY KOKOMO IN 46902	**24-46-23-W3-03200.1110** 800 ESTERO BLVD #111 FORT MYERS BEACH FL 33931	ROYAL BEACH CLUB CONDO PH-II OR 1530 PG 1352 UNIT 111	*67
BEL-AIR BEACH CLUB CONDO 780 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-03400.00CE** 782 ESTERO BLVD FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO COMMON AREA DESC IN OR 1765 PG 1585	68
BEL-AIR BEACH CLUB ASSOC 780 ESTERO BLVD FORT MYERS BEACH FL 33931	**24-46-23-W3-03400.1010** 780 ESTERO BLVD #101 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765/1585 UT 101 THRU 104 / 202 / 204 THRU 403 (13 UNITS)	*69
SAWYER WILLIAM R + SONYA L PO BOX 69 RAIL ROAD ST EXT MILTON VT 05468	**24-46-23-W3-03400.2010** 780 ESTERO BLVD #201 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT 201	*69
WILLE BRIAN + 19752 REGAN RD NEW LENOX IL 60451	**24-46-23-W3-03400.2030** 780 ESTERO BLVD #203 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT 203	*69
TALLMAN CHARLES L 1/3 INT ETAL 317 RICHARD PL ITHACA NY 14850	**24-46-23-W3-03400.4040** 780 ESTERO BLVD #404 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT 404	*69
DEALEY LARRY + JUDY PO BOX 259 CONVOY OH 45832	**24-46-23-W3-034PH.0010** 780 ESTERO BLVD #PH1 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT PH-1	*69
WATTS SHEILA A TR 8450 SLEEPY HOLLOW DR NE WARREN OH 44484	**24-46-23-W3-034PH.0020** 780 ESTERO BLVD #PH2 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT PH-2	*69
WATTS SHEILA A TR 8450 SLEEPY HOLLOW DR NE WARREN OH 44484	**24-46-23-W3-034PH.0030** 780 ESTERO BLVD #PH3 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT PH-3	*69
FIELD JOHN + MARIA 1ST AMERICAN R/E TAX SERVICE CLIENT SERV DEPT M/C DAL 008 8435 STEMMONS FWY DALLAS TX 75247	**24-46-23-W3-034PH.0040** 780 ESTERO BLVD #PH4 FORT MYERS BEACH FL 33931	BEL AIR BEACH CLUB CONDO OR 1765 PG 1585 UNIT PH-4	*69
BAY TO BEACH ASSN	**24-46-23-W3-03900.00CE** 742 ESTERO BLVD FORT MYERS BEACH FL 33931	BAY TO BEACH AS DESC IN OR 4125 PGS 1497 COMMON ELEMENTS	70
ENDRES RONALD G + BRENDA J 5798 EMERALD GROVE LANE WAUNAKEE WI 53597	**24-46-23-W3-0390A.0001** 740 ESTERO BLVD #A1 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A1	*71
BAY TO BEACH INC PO BOX 95 CASEY IL 62420	**24-46-23-W3-0390A.0002** 740 ESTERO BLVD #A2 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A 2	*71
CHRISTY DERRICK + 3933 EAGLE TRACE GREENWOOD IN 46143	**24-46-23-W3-0390A.0003** 740 ESTERO BLVD #A3 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A3	*71

OWNER NAME AND ADDRESS	STRAP AND LOCATION	LEGAL DESCRIPTION	Map Index
JOHNSTON IAN + SUSAN J 386 SYCAMORE RIDGE CT AVON IN 46123	**24-46-23-W3-0390A.0004** 740 ESTERO BLVD #A4 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A4	*71
HAGEL THOMAS 520 QUEENS GRANT RD FAIRFIELD CT 06824	**24-46-23-W3-0390A.0005** 740 ESTERO BLVD #A5 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A5	*71
GILL JAMES H 4891 STONEHAVEN DR COLUMBUS OH 43220	**24-46-23-W3-0390A.0006** 740 ESTERO BLVD #A6 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A6	*71
JAGGR FLORIDA L P 235 EUGENIE ST W STE 105D WINDSOR ON N8X 2X7 CANADA	**24-46-23-W3-0390A.0007** 740 ESTERO BLVD #A7 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A7	*71
JAGGR FLORIDA LP 235 EUGENIE ST W STE 105D WINDSOR ON N8X 2X7 CANADA	**24-46-23-W3-0390A.0008** 740 ESTERO BLVD #A8 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT A8	*71
SOLANS ENRIC P + ANTOINETTE C 1821 BOULDER DR MT PROSPECT IL 60056	**24-46-23-W3-0390B.0001** 740 ESTERO BLVD #B1 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT B1	*71
MILLER DONALD W + WANDA J 3065 BAYVIEW AVE TORONTO ON M2K 1G1 CANADA	**24-46-23-W3-0390B.0002** 740 ESTERO BLVD #B2 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT B2	*71
JAGGR FLORIDA LP 235 EUGENIE ST W STE 105D WINDSOR ON N8X 2X7 CANADA	**24-46-23-W3-0390C.0001** 740 ESTERO BLVD #C1 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT C1	*71
WISSINGER WILLIAM T + 740 ESTERO BLVD #C2 FORT MYERS BEACH FL 33931	**24-46-23-W3-0390C.0002** 740 ESTERO BLVD #C2 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT C2	*71
DUFFY FAMILY LIMITED 106 EULA ST WILMINGTON IL 60481	**24-46-23-W3-0390D.0001** 740 ESTERO BLVD #B3 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT D1	*71
ERIKSEN HEIDI N VEDELSGADE 23 7100 VEJLE DENMARK	**24-46-23-W3-0390D.0002** 740 ESTERO BLVD #B4 FORT MYERS BEACH FL 33931	BAY TO BEACH DESC OR 4125 PG 1497 UNIT D2	*71

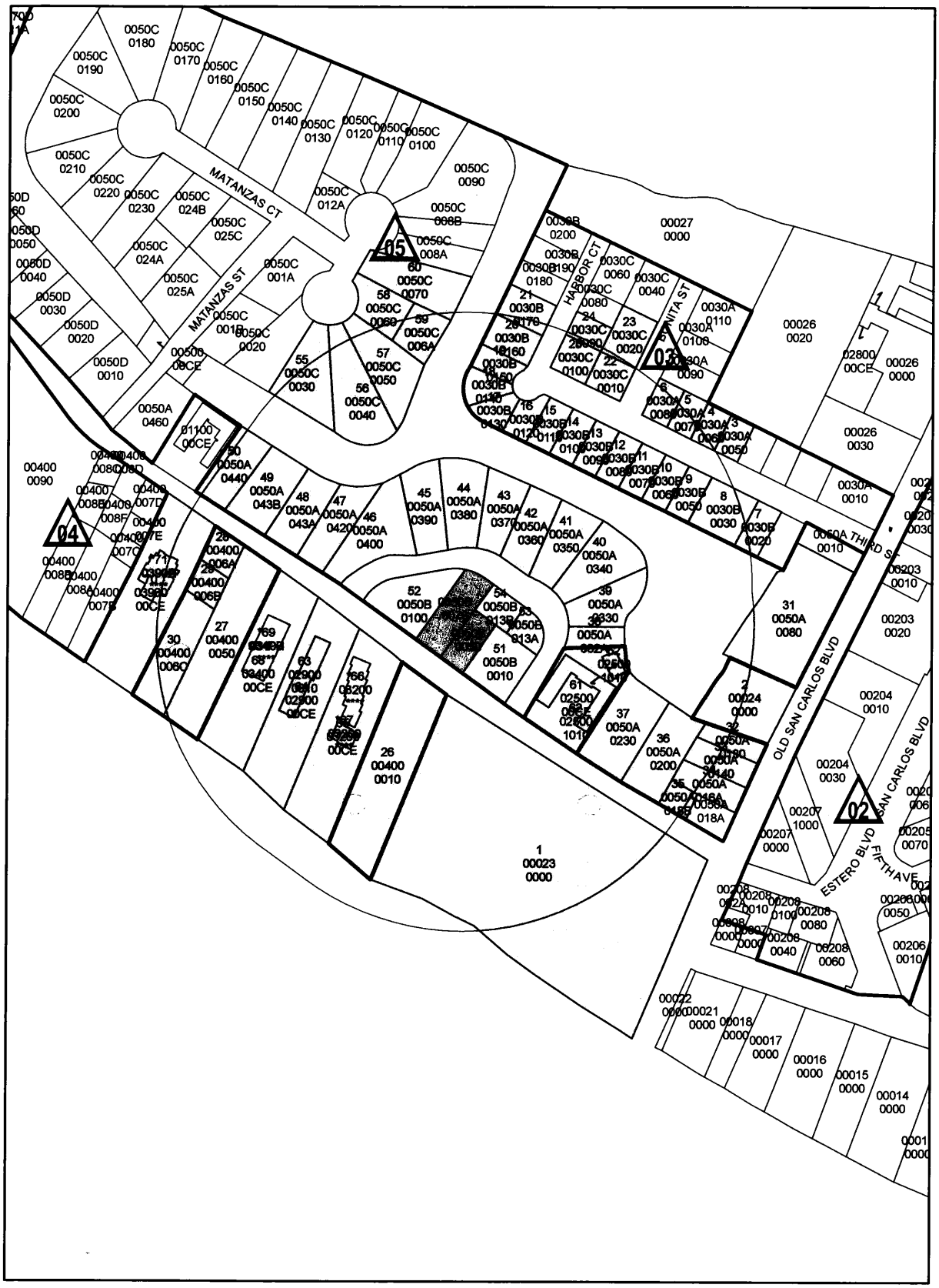
100 RECORDS PRINTED

EXHIBIT 5-8

VARIANCE REPORT

12/16/2009

Subject Parcels : 2 Affected Parcels : 100 Buffer Distance : 500 ft



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24-46-23-W3-0050B.0050 et al.

320 160 0 320 Feet