

Town of Fort Myers Beach  
Public Works Services, Inc.  
Agenda Item Summary

Blue Sheet Number: 2011-121

**1. Requested Motion:** Motion to approve Amended and Restated Easement Relocation View Corridor Agreement concerning the walkway Between Captiva Villas and White Sands

**Meeting Date:** 10/17/11

**Why the action is necessary:** The written agreement is required to relocate the walkway as approved in the Master Concept Plan.

**What the action accomplishes:** Relocates the walkway to an area that is between White Sands and Captiva Villas

**2. Agenda:**

**3. Requirement/Purpose:**

**4. Submitter of Information:**

Consent  
 Administrative

Resolution  
 Ordinance  
 Other

Council  
 Town Staff  
 Town Attorney

**5. Background:** The Town Council approved a Master Concept Plan for the Gulf side of Pink Shell in January, 2010. The Resolution approving the MCP permits the relocation of the walkway easement from its current location between White Sands and Captiva Villas to the newly approved location on the north side of Captiva Villas adjacent to Sanibel View. The agreement which is attached hereto releases the existing easement and accepts the new easement, subject to Lee County approving the relocation. The agreement also maintains the existing 36 foot wide view corridor between Captiva Villas and White Sands.

**6. Alternative Action:** Decline to approve the agreement.

**7. Management Recommendations:** Approve the agreement.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other



2320 FIRST STREET  
SUITE 1000  
FORT MYERS, FL 33901-2904  
239.338.4207 DIRECT  
239.337.3850 MAIN  
239.337.0970 FAX  
bgrady@ralaw.com  
www.ralaw.com

September 27, 2011

Marilyn Miller, Esq.  
Fowler White Boggs Banker  
2235 First Street  
Fort Myers, FL 33901

Re: Exchange of Walkway Easement

Dear Marilyn:

Pink Shell is pleased to hear that the walkway easement exchange will be scheduled for the Town Council meeting of Monday, October 17<sup>th</sup>. This complements the relocation depicted on the approved Master Concept Plan. Please confirm that all staff reviews have been completed. When Pink Shell was originally approved in the 1980's there was a requirement by Lee County regarding the beach accesses. Originally, this beach access easement went through the middle of the Captiva Villas property. When it was relocated from the middle of the Captiva Villas property to between White Sands and Captiva Villas, Lee County had to approve the relocation and was granted an easement over the same relocation real estate. The Town was also granted, not only the 6 foot walkway easement but also required a view corridor.

Since Lee County holds a walkway easement over the existing 6 foot and the Town has its own easement over the 6 foot walkway area, we need to have both entities approve the relocation to the proposed location between Sanibel View and Captiva Villas. Therefore, we would request that the Town approve the instrument releasing the existing easement and accepting the new walkway easement subject to the condition that Lee County approve the relocation of the easement. You can understand that Pink Shell needs both parties to agree in order to have the easement successfully relocated. We would request that you hold the exchange instrument in escrow until Lee County approves the relocation.

Very truly yours,

ROETZEL & ANDRESS, LPA

Beverly Grady

BG/umr

cc: Bob Boykin  
Bill Waichulis  
Walter Flugel



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FORT MYERS, FL 33901-2904  
239.338.4207 DIRECT  
239.337.3850 MAIN  
239.337.0970 FAX  
bgrady@ralaw.com  
www.ralaw.com

July 14, 2011

Mr. Terry Stewart, Town Manager  
Town of Fort Myers Beach  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

Re: Pedestrian Beach Access Exchange

Dear Mr. Stewart:

Pink Shell has been working with the Town to relocate a beach access from one side of Captiva Villas to the other north side.

Enclosed is the approved Master Concept Plan for the Gulf side of Pink Shell approved by the Town Council pursuant to Resolution 10-5 in January. It permits the relocation of the walkway easement from its current location between White Sands and Captiva Villas to the newly approved location on the north side of Captiva Villas adjacent to Sanibel View. The enclosed documents provide the legal description for the new walkway easement (2011 Walkway Easement) and extinguish the current walkway easement.

The document maintains the existing 36 foot wide view corridor between Captiva Villas and White Sands. We would request that you schedule the Amended and Restated Easement Relocation View Corridor Agreement before Town Council for its approval.

We have enclosed the Amended and Restated Easement Relocation View Corridor Agreement for review by Ms. Miller. If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

ROETZEL & ANDRESS, LPA

Beverly Grady

BG/umr

Enclosure: Approved Master Concept Plan for Gulf side of Pink Shell  
Proposed Amended and Restated Easement Relocation View Corridor Agreement

cc: Walter Fluegel  
Marilyn Miller  
Bill Waichulis  
Robert Boykin  
Kevin Hyland

This Instrument Prepared By:

ROETZEL & ANDRESS, A Legal Professional Association  
2320 First Street, Suite 1000  
Fort Myers, Florida 33901

**AMENDED AND RESTATED EASEMENT**  
**RELOCATION VIEW CORRIDOR AGREEMENT**

This Amended and Restated Easement Relocation View Corridor Agreement is made by and between JABO, LLC, a Delaware limited liability company (successor in title to Boykin Hotel Properties, L.P., an Ohio limited partnership), and Captiva Villas Development, LLC, a Delaware limited liability company (collectively, the "Owner") and the Town of Fort Myers Beach, Florida a municipality, ("Easement Holder").

WITNESSETH:

WHEREAS, Boykin Hotel Properties, L.P., predecessor in title to JABO, LLC, and Captiva Villas Development, LLC, collectively as Owner, and the Town of Fort Myers Beach, Florida, as Easement Holder, are parties to that certain Easement Relocation View Corridor Agreement, recorded in Official Records (O.R.) Book 4394, at Page 3212, Public Records of Lee County, Florida ("Existing Walkway/View Corridor Easement");

WHEREAS, JABO, LLC has acquired from Boykin Hotel Properties, L.P. fee simple title to all real estate owned by it which is subject to the Existing Walkway/View Corridor Easement;

WHEREAS, the Existing Walkway/View Corridor Easement: (1) created a certain 36 foot wide "View Corridor" (as defined therein) and contained certain terms related thereto; and (2) created a certain walkway easement within the New Easement Area described on Exhibit B to the Existing Walkway/View Corridor Easement (hereafter referred to as the "Existing Walkway Easement") and contained certain terms related thereto;

WHEREAS, Owner has requested that Easement Holder agree to further relocate the Existing Walkway Easement to the easement area described in Exhibit A attached hereto ("2011 New Easement Area"), which is owned by Captiva Villas Development, LLC, and Easement Holder has agreed to such relocation of the Existing Walkway Easement, all in accordance with the terms and conditions hereof; and

WHEREAS, Owner and Easement Holder desire to amend and restate the Existing Walkway/View Corridor Easement in order to (1) provide for the relocation of

the Existing Walkway Easement to the 2011 New Easement Area, (2) preserve the View Corridor provided in the Existing Walkway/View Corridor Easement and the terms and conditions of such document as it relates to the View Corridor, and (3) conform such agreement to the current intent and desires of the parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, Owner and Easement Holder agree as follows:

1. Captiva Villas Development, LLC ("CVD") hereby grants and conveys to Easement Holder a perpetual, non-exclusive walkway easement ("2011 New Easement") on, over and across the 2011 New Easement Area described in Exhibit "A" attached hereto for the purposes of providing the public with pedestrian (only) ingress and egress to and from Estero Boulevard and the Gulf of Mexico, together with the right and easement to maintain same to the extent CVD fails to do so. As set forth in Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Resolution Number 10-05, the Master Concept Plan referred to in such Resolution 10-05, (collectively, the "Resolution/Plan") and in any local development order issued pursuant to the Resolution/Plan, CVD shall construct and improve the walkway within the 2011 New Easement Area; provided, however, that CVD will not construct any structures or facilities within the 2011 New Easement Area. CVD further will, in perpetuity, maintain the walkway in good order and repair, at CVD's sole cost and expense. In the event that ~~CVD fails to do so, the Easement Holder may perform such maintenance and recover the~~ reasonable cost thereof from CVD. The 2011 New Easement only allows use by pedestrians of the 2011 New Easement Area; such users shall not be permitted to use motorcycles, bicycles, skates, skateboards, scooters or other motorized or non-motorized aids to or forms of transportation within the 2011 New Easement Area. The obligations of CVD under this Section 1 apply only to Captiva Villas Development, LLC, as it is the sole owner of the 2011 New Easement Area.

2. Owner hereby establishes a non-exclusive, perpetual view corridor area ("View Corridor") on, over and across the thirty-six (36) feet wide area of land described in Exhibit B attached hereto in order to preserve a view of the Gulf of Mexico from Estero Boulevard, all as more particularly described in the Town of Fort Myers Beach Resolution 01-26 and ADD2003-00086 (View Corridor Plan). As set forth in the View Corridor Plan, Owner has constructed and improved the View Corridor; Owner will not construct any structures or facilities within the View Corridor. Owner further will, in perpetuity, maintain the View Corridor in good order and repair, at Owner's sole cost and expense. In the event that Owner fails to do so, the Easement Holder may perform such maintenance and recover the reasonable cost thereof from Owner. Within the View Corridor, parking is allowed, in substantial conformance with the View Corridor Plan.

3. This Amended and Restated Easement Relocation View Corridor Agreement amends and restates in its entirety the Existing Walkway View Corridor Agreement. Notwithstanding, and without limitation: (a) the Existing Walkway Easement on, over and across the "New Easement Area" (as defined in the Existing Walkway/View Corridor Easement) is hereby terminated, and Owners shall own their

portion of such New Easement Area free and clear of any walkway easement rights in favor of Easement Holder, and (b) Section 2 of the Existing Walkway/View Corridor Easement is hereby restated in this Amended and Restated Easement Relocation View Corridor Agreement, and the "Existing Easement" referred to in Section 2 remains terminated as set forth in the Existing Walkway/View Corridor Easement.

IN WITNESS WHEREOF, the parties have signed this Amended and Restated Easement Relocation View Corridor Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

[signatures on following page]

Approved as to form:

By: \_\_\_\_\_  
Town Attorney

Attest:

By: \_\_\_\_\_  
Town Clerk

**“Owner”**

JABO, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
Robert W. Boykin, Managing Member

Address: 8015 W Kenton  
Suite 220  
Huntersville, NC 28078

Witnesses (as to New Pink Shell):

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**“Easement Holder”**

Town of Fort Myers Beach

By: \_\_\_\_\_  
Mayor

**“Owner”**

Captiva Villas Development, LLC, a  
Delaware limited liability company

By: New Pink Shell, LLC, a  
Delaware limited liability company,  
Sole Member

By: \_\_\_\_\_  
Robert W. Boykin, Manager

Address: 8015 W Kenton  
Suite 220  
Huntersville, NC 28078

Witnesses (as to Captiva Villas):

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Robert W. Boykin, as Managing Member of JABO, LLC, a Delaware limited liability company, on behalf of such company, who is personally known to me or provided \_\_\_\_\_ [type of identification] as identification.

(Notary Seal)

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Serial No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Robert W. Boykin, as Manager of New Pink Shell, LLC, a Delaware limited liability company, sole member of Captiva Villas Development, LLC, a Delaware limited liability company, on behalf of said companies, who is personally known to me or provided \_\_\_\_\_ [type of identification] as identification.

(Notary Seal)

\_\_\_\_\_  
Notary Public – State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Serial No: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



OCTOBER 20, 2006  
JOB # 04-7019  
FILE # 04-7019WALKESM'T02LGL  
SHEET 1 OF 2

DESCRIPTION:

A WALKWAY EASEMENT LYING IN LOT 38, ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IN SECTION 24, TOWNSHIP 45 SOUTH, RANGE 23 EAST DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN OFFICIAL RECORDS BOOK 3559, PAGE 222 PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.42°07'25"E. ALONG THE NORTH LINE OF SAID LOT 38, FOR 4.50 FEET; THENCE S.47°52'35"W., PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID SANIBEL VIEW VILLAS, 88.17 FEET; THENCE N.87°07'25"W., FOR 24.26 FEET; THENCE S.47°52'35"W., FOR 95.59 FEET; THENCE N.42°07'25"W., FOR 6.00 FEET; THENCE N.47°52'35"E., FOR 98.08 FEET; THENCE S.87°07'25"E., FOR 24.26 FEET; THENCE N.47°52'35"E., FOR 2.00 FEET TO THE SOUTHWESTERLY LINE OF SAID SANIBEL VIEW VILLAS; THENCE S.42°07'25"E. ALONG SAID SOUTHWESTERLY LINE, 1.50 FEET TO THE SOUTHEASTERLY LINE OF SAID SANIBEL VIEW VILLAS; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE, 83.68 FEET TO THE POINT OF BEGINNING.

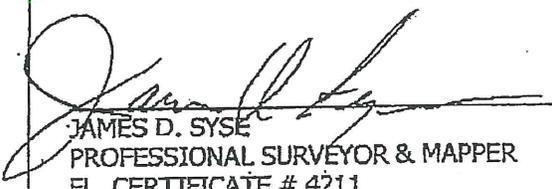
CIVIL  
AGRICULTURAL  
WATER RESOURCES  
WATER & WASTEWATER  
TRANSPORTATION  
SURVEYING & MAPPING  
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SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

CONTAINING 1123 SQUARE FEET MORE OR LESS

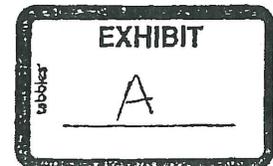
SEE SHEET 2 OF 2 FOR SKETCH.

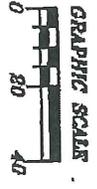
  
JAMES D. SYSE  
PROFESSIONAL SURVEYOR & MAPPER  
FL. CERTIFICATE # 4211

1400 Colonial Blvd., Suite 31  
Fort Myers, FL 33907  
(239) 931-0455  
Fax: (239) 931-0456  
www.lbfbh.com

P:\04-7019\Survey\Sketch\04-7019WALKESM'T02revLGL.doc

2011 NEW EASEMENT AREA





**SKETCH (NOT A SURVEY)**  
 WALKWAY EASEMENT  
 A PARCEL OF LAND LYING IN  
 SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST  
 LEE COUNTY, FLORIDA

DATE	5/16/06
SCALE	1"=40'
DRAWN	OP
CHECK	IDS
APPROVED	

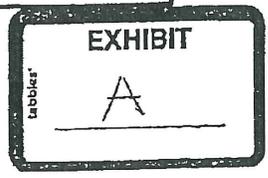
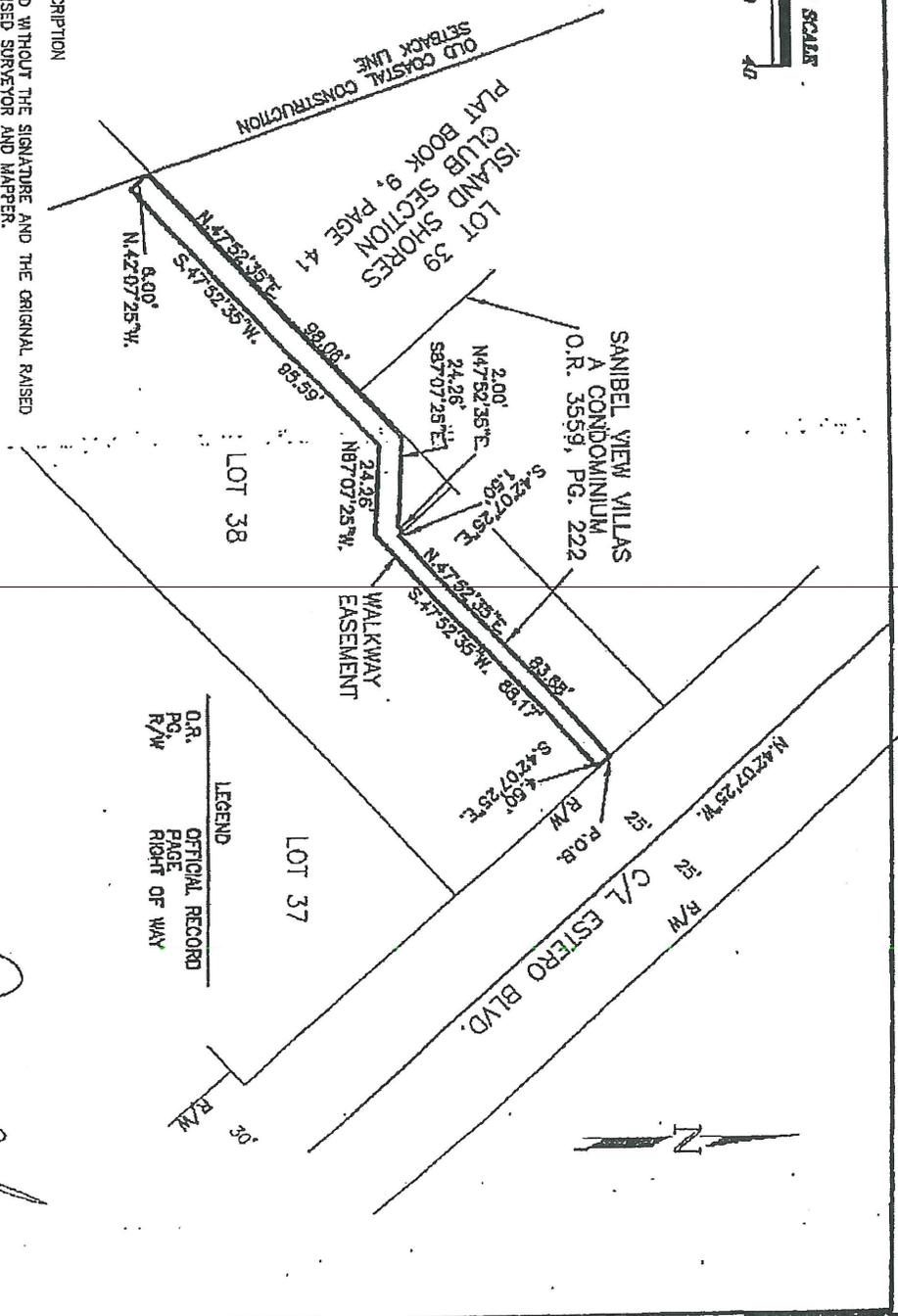
**Ink Engineering**  
 A Division of LBFH, Inc. "Partners For Results"  
 "Value By Design"  
 1400 Colonial Blvd., Suite 51, Fort Myers, Florida 33107  
 (941) 931-0458 Fax: (941) 931-0459  
 BPR & FBPE License No. 859 new@lbfi.com

04-7019SK02WALK  
 JOB NO:  
**04-7019**

REFER TO ATTACHED DESCRIPTION  
 THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED  
 SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.  
 SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, AND RIGHTS OF WAY OF  
 RECORD.  
 BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF ESTERO  
 BOULEVARD BEING N.42°07'25"W

SHEET 2 OF 2

*[Signature]*  
 JAMES D. SISE, FOR THE FIRM  
 PROFESSIONAL SURVEYOR & MAPPER  
 P.L.A. LICENSE NO. 4211



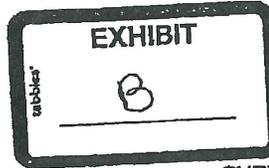
# Ink Engineering

A Division of  
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SHEET 1 OF 2

OCTOBER 1, 2003  
JOB # 03-7021A  
FILE # 03-7021ASK7CORLGL

A SCENIC CORRIDOR EASEMENT LYING ON LOT 36 OF UNIT NO. 4,  
ISLAND SHORES, PLAT BOOK 9, PAGE 37 AND LOT 37 OF ISLAND SHORES  
CLUB SECTION, PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORD OF LEE  
COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### DESCRIPTION:

BEGIN AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF SAID  
LOT 37 AND THE SOUTHWESTERLY RIGHT OF WAY OF ESTERO  
BOULEVARD 25 FEET FROM THE CENTERLINE; THENCE S.47°52'35"W.  
ALONG THE SAID RIGHT OF WAY FOR 5.00 FEET SAID POINT BEING 30  
FEET FROM THE CENTERLINE AND BEING THE NORTHERLY MOST  
CORNER OF SAID LOT 36; THENCE S.42°07'25"E. ALONG SAID RIGHT OF  
WAY AND THE NORTHEASTERLY LINE OF SAID LOT 36 FOR 21.84 FEET;  
THENCE S.47°52'35"W. LEAVING SAID RIGHT OF WAY FOR 86.72 FEET;  
THENCE N.42°07'25"W. FOR 0.74 FEET; THENCE S.47°52'35"W. FOR  
109.57 FEET; THENCE S.42°07'25"E. FOR 0.74 FEET; THENCE  
S.47°52'35"W. FOR 62.70 FEET TO A POINT ON THE OLD COASTAL  
CONSTRUCTION SETBACK LINE ESTABLISHED BY LEE COUNTY; THENCE  
ALONG THE SAID SETBACK LINE FOR THE FOLLOWING TWO CALLS: (1)  
N.40°27'57"W. FOR 22.27 PASSING THROUGH THE LINE COMMON TO  
SAID LOT 36 AND LOT 37; (2) THENCE N.19°21'03"W. FOR 14.90 FEET;  
THENCE N.47°52'35"E FOR 257.58 FEET TO A POINT ON SAID  
SOUTHWESTERLY RIGHT OF WAY OF ESTERO BOULEVARD 25 FEET  
FROM THE CENTERLINE; THENCE S.42°07'25"E. ALONG SAID RIGHT OF  
WAY AND THE NORTHEASTERLY LINE OF SAID LOT 37 FOR 14.16 FEET  
TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTION, RESERVATIONS AND RIGHTS OF  
WAY OF RECORD.

  
GORDON D. MEIERS, FOR THE FIRM  
PROFESSIONAL LAND SURVEYOR  
FL. CERT. # 2858

LEGEND  
 D.B. DEED BOOK  
 (A) DEED NUMBER  
 (B) OFFICIAL RECORD  
 P.B. PLAT  
 P.A. PLAT  
 P.O.B. POINT OF BEGINNING

LINE TABLE

Line	Bearing	Distance
L1	S.47°52'33"W	5.00'
L2	S.42°07'23"E	21.84'
L3	S.47°52'33"W	86.72'
L4	N.42°07'23"W	0.74'
L5	S.47°52'33"W	108.57'
L6	S.42°07'23"E	0.74'
L7	S.47°52'33"W	82.70'
L8	N.40°27'57"W	22.27'
L9	N.19°21'03"W	1.21.00'
L10	N.47°52'33"E	257.58'
L11	S.42°07'23"E	14.18'

REFER TO ATTACHED DESCRIPTION

- SURVEYOR'S NOTES
1. BEARINGS SHOWN HEREON ARE BASED ON THE CENTURINE OF ESTERO BLVD. BEING N.42°07'23"W.
  2. MEAN HIGH TIDE LINE SHOWN HEREON IS APPROXIMATE AS OF DATE SHOWN. ELEVATION WAS PROVIDED VERBALLY BY STATE OF FLORIDA DEPARTMENT OF SURVEYING AND MAPPING.
  3. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND APPROPRIATE TO ELEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

SKETCH (NOT A SURVEY)

SCENIC CORRIDOR EASEMENT  
 A PARCEL OF LAND LYING IN  
 SECTION 24, TOWNSHIP 46 S., RANGE 23 E.  
 LEE COUNTY, FLORIDA

APPROXIMATE HIGH WATER  
 TIDE ELEVATION LINE  
 LOCATED ON 9/13/03

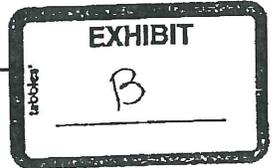
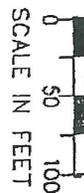
SHEET 2 OF 2

CDRAGON D. HILERY FOR THE FIRM  
 PROFESSIONAL LAND SURVEYOR  
 F.L.A. CERTIFICATE NO. 2855

DATE	10/1/03
SCALE	NOTED
DRAWN	CP
CHECK	
APPROVED	

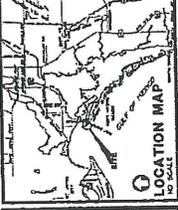
**Ink Engineering**  
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 SURVEYORS & MAPPERS  
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 1400 Colonial Blvd., Suite 31, Fort Myers, Florida 33907  
 (941) 931-0455 Fax: (941) 931-0456  
 BPR & FBPE License No: 959  
 www.ink.com

03-7021ASK7COR  
 JOB NO.:  
**03-7021A**



**PINK SHELL C P D**  
**GULF SIDE**  
**MASTER CONCEPT PLAN**

Gora  
McCabe  
Associates IN  
ARCHITECTURE  
Fort Myers, Florida 33907  
43 Barkley Circle Suite 202  
941-275-0225 Fax 941-275-7123

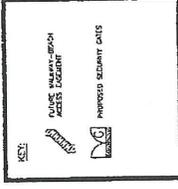
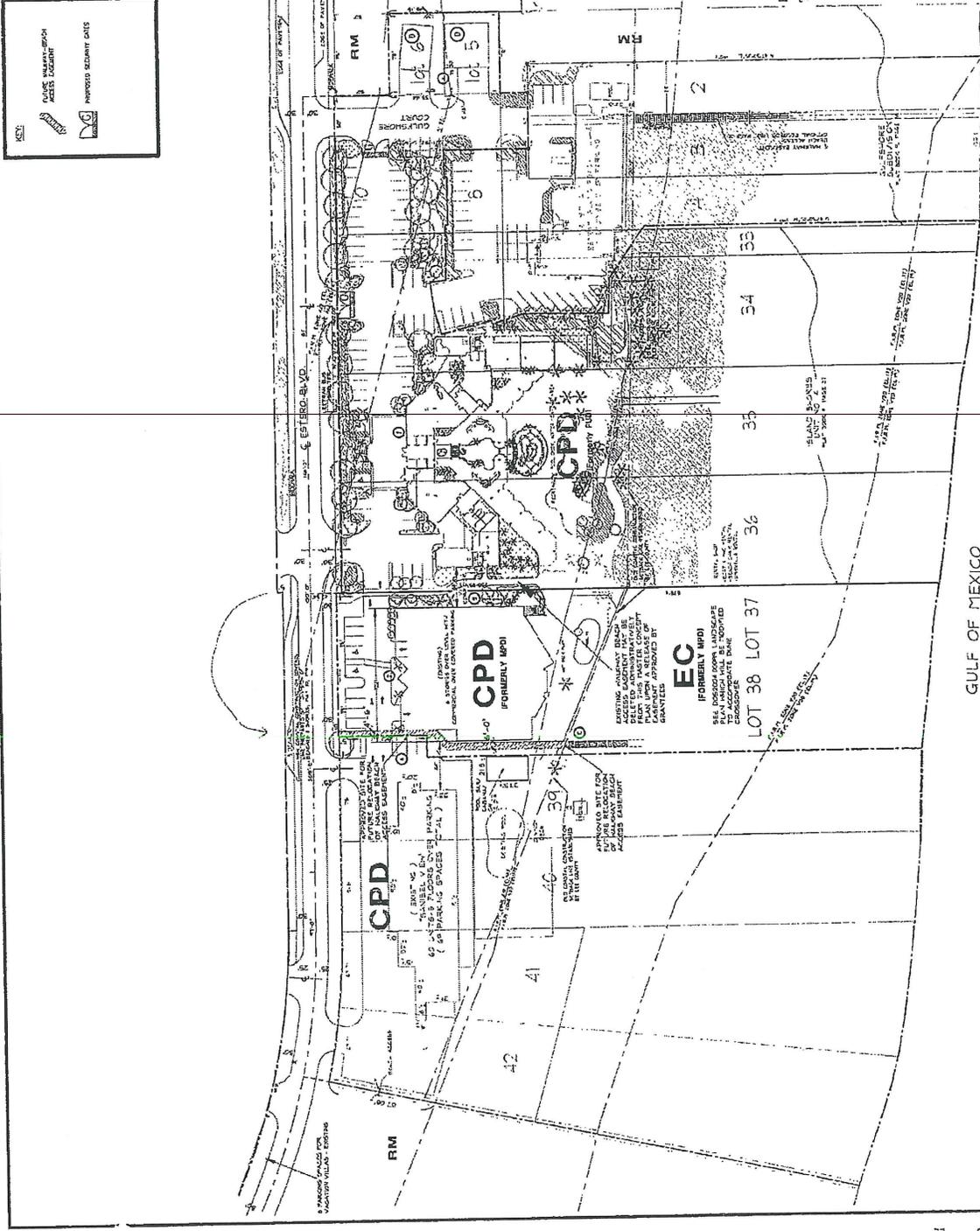
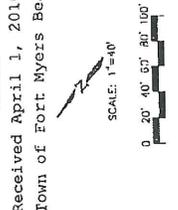


**CPD NOTES:**  
1. PINK SHELL EXCHANGE "EMERALD" - NOT PART OF THIS PROJECT.  
2. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.  
3. THIS PROJECT IS SUBJECT TO ALL APPLICABLE CODES AND REGULATIONS.  
4. THIS PROJECT IS SUBJECT TO ALL APPLICABLE CODES AND REGULATIONS.  
5. THIS PROJECT IS SUBJECT TO ALL APPLICABLE CODES AND REGULATIONS.  
6. THIS PROJECT IS SUBJECT TO ALL APPLICABLE CODES AND REGULATIONS.

**2010 REVISIONS TO MAP FOR PINK SHELL COASTSIDE CPD**  
A. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.  
B. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.  
C. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.  
D. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.  
E. MAKE SURE ALL NEW CONSTRUCTION COMPLIES WITH ALL APPLICABLE CODES AND REGULATIONS.

**PARKING COUNT**  
**EXISTING & PROPOSED**  
• ALL EXISTING PARKING SPACES ARE INDICATED BY SHADING.  
• ALL PROPOSED PARKING SPACES ARE INDICATED BY DASHES.  
• EXISTING PARKING: 13 SPACES  
• PROPOSED PARKING: 13 SPACES  
• TOTAL: 26 SPACES

RECEIVED April 1, 2010  
Town of Fort Myers Beach  
RECEIVED 02/23/10  
REVISED 03/25/10



RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 10-05  
GULFSIDE PARCELS

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

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

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

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

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

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

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

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

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

The Town Council **APPROVES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL of seven (7) conditions**. The Town Council acknowledges that the previously requested deviations have been **WITHDRAWN**.

**A. CONDITIONS**

1. Development must be consistent with the MCP titled "Pink Shell CPD Gulf Side Master Concept Plan" stamped received April 1, 2010, except as specifically modified by conditions or deviations herein. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.
4. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.
5. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.
6. Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for the occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the

businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.

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

## B. DEVIATIONS

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

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council **APPROVES deviation #2.**

## FINDINGS AND CONCLUSIONS

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

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
  - a. The Town Comprehensive Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.

5. The proposed use or mix of uses **MEETS** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and  
Comprehensive Plan Policy 4-C-3 regarding commercial locations.

6. As to the schedule of deviations, as conditioned:
- A. Regarding requested Deviation #1, the Town Council acknowledges the withdrawal of this request by the applicant on September 25, 2009.
- B. Regarding Deviation #2, the Town Council acknowledges that Deviation #2 does not affect the subject property.

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

Larry Kiker, Mayor AYE  
Tom Babcock AYE  
Bob Raymond AYE

Herb Acken, Vice Mayor AYE  
Jo List AYE

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> DAY OF JANUARY, 2010, BY THE

**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By: Larry Kiker  
Larry Kiker, Mayor

ATTEST:  
By: Michelle D. Mayher  
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: Anne Dalton  
Anne Dalton, Esquire, Town Attorney

Resolution 10-05



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Town of Fort Myers Beach

F M B DCI 200600002

JOB # 32547  
FILE # 32547SK02  
SHEET 1 OF 2

JULY 16, 2007

**DESCRIPTION:**

PART OF GULFSHORE SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88 AND PART OF UNIT 4 ISLAND SHORES AS RECORDED IN PLAT BOOK 9, PAGE 37 AND PART OF ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41, ALL RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 10 OF SAID GULFSHORE SUBDIVISION; THENCE S.47°52'35"W. ALONG THE SOUTHEASTERLY LINE OF LOTS 9 AND 10 OF SAID GULFSHORE SUBDIVISION FOR 98.24 FEET; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 37.67 FEET; THENCE N.40°27'57"W. FOR 313.13 FEET; THENCE N.19°21'03"W. FOR 162.23 FEET TO THE NORTHWESTERLY LINE OF LOT 38 OF SAID ISLAND SHORES CLUB SECTION; THENCE N.47°52'35"E. ALONG SAID NORTHWESTERLY LINE FOR 116.87 FEET; THENCE S.42°07'25"E. FOR 19.50 FEET; THENCE N.47°52'35"E. FOR 83.68 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE ALONG SAID RIGHT OF WAY LINE FOR THE FOLLOWING 3 COURSES: (1) S.42°07'25"E. FOR 130.50 FEET; (2) S.47°52'35"W. FOR 5.00 FEET; (3) S.42°07'25"E. FOR 400.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 113.474 SQUARE FEET OR 2.61 ACRES MORE OR LESS

**TOGETHER WITH:**

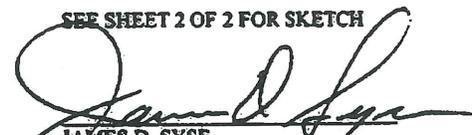
LOTS 5 AND 6 OF GULFSHORE SUBDIVISION AS RECORDED IN BOOK 9, PAGE 88 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 6; THENCE S.42°07'25"E ALONG THE NORTHEASTERLY LINE OF SAID LOT 6 FOR 75.00 FEET; THENCE S.47°52'35"W. ALONG THE SOUTHEASTERLY LINE OF SAID LOTS 6 AND 5 FOR 100.00 FEET; THENCE N.42°07'25"W. ALONG THE SOUTHWESTERLY LINE OF SAID LOT 5 FOR 75.00 FEET; THENCE N.47°52'35"E. FOR 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7,500 SQUARE FEET OR 0.17 ACRES MORE OR LESS

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

SEE SHEET 2 OF 2 FOR SKETCH

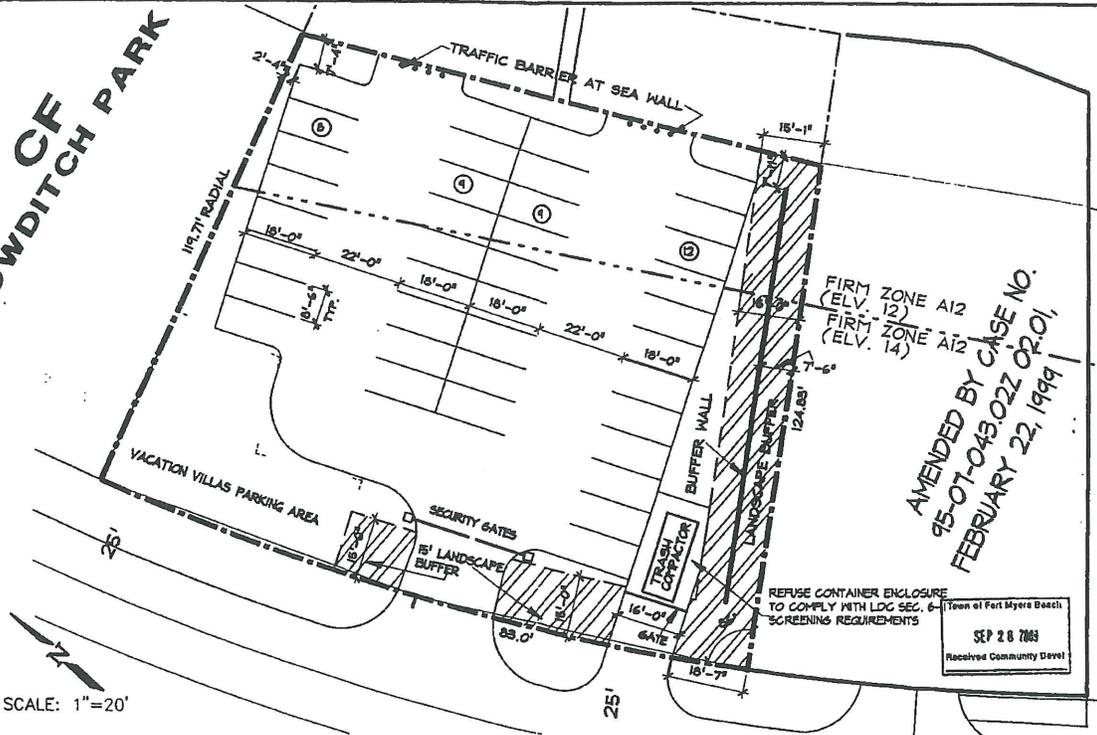
  
JAMES D. SYSE  
PROFESSIONAL SURVEYOR AND MAPPER  
FL. CERT. NO. 4211

RECEIVED  
AUG 01 2007

BY: .....

EXHIBIT  
7-2 + 7-4  
Gulf Side  
Legal + Sketch  
July 2007

**BOWDITCH PARK**  
**CF**



AMENDED BY CASE NO.  
95-07-043.022 OR.OI.  
FEBRUARY 22, 1999

REFUSE CONTAINER ENCLOSURE  
TO COMPLY WITH LDG SEC. 6  
SCREENING REQUIREMENTS

SEP 28 1988  
Received Community Dept

SCALE: 1"=20'



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CORA McGAHEY ARCHITECTURE ASSOCIATES IN ARCHITECTURE	43 Broadway Circle Suite 200 Fort Myers, Florida 33901 239-455-4500 Fax 239-455-4708	DATE 02/01-02/24/01	DRAWN BY DATE 02/01-02/24/01	PARKING PLAN (GRAVEL/SHELL PARKING AREA TO INCLUDE VALET)	

