

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2012- 002  
FMBSEZ2011-0003 (Paradise Tropical Wines)

WHEREAS, applicant Eric Malasky has requested a special exception in the DOWNTOWN zoning district to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty fruit wines; and

WHEREAS, the subject property is located at 159 Old San Carlos Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 24-46-23-W3-0050A.016A and the legal description of the subject property is attached as **Exhibit A**; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on January 10, 2012; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception in the DOWNTOWN zoning district to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty fruit wines, with any approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

- 1. That the special exception be approved only for a 2-COP (beer and wine) alcoholic beverage permit to allow consumption on premises of specialty fruit wines and the package sales thereof. If an increase in the alcoholic beverage licenses series is sought, a new approval in accordance with the LDC will be required.*

2. *Consumption on premises is limited to the retail package store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan **Exhibit C**.*
3. *The 2-COP for consumption on premises is limited to tastings of one-half (1/2) to one (1) ounce servings to adults age 21 or above, who are interested in purchasing the specialty Florida fruit wines.*
4. *Sales of specialty wines for consumption off the premises must be in factory-sealed containers. At no time shall alcoholic beverages be sold "by the glass" for consumption on premises.*
5. *Hours of operation for consumption on premises shall be limited to the hours of 10:00 AM to 10:00 PM, daily. The package store may be open during hours outside of this restriction, but consumption on premises shall be limited to the hours listed herein.*
6. *The subject application does not include consumption on premises in conjunction with outdoor seating areas. All consumption (tasting) activities must take place inside the retail store.*

#### **RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do/do not exist** that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is/is not** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, as conditioned, **meets or exceeds/does not meet or exceed** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will/will not** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will/will not** be compatible with existing or planned uses and **will/will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will/will not** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

*Remainder of this page intentionally left blank*

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	AYE/NAY	Al Durrett, Member	AYE/NAY
Alan Smith, Member	AYE/NAY	John Kakatsch, Member	AYE/NAY
Hank Zuba, Member	AYE/NAY	Jane Plummer, Member	AYE/NAY

DULY PASSED AND ADOPTED THIS **10th** day of JANUARY, 2012.

Local Planning Agency of the Town of Fort Myers Beach

By: \_\_\_\_\_  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
*LPA Attorney*

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
*Town Clerk*



***Town of Fort Myers Beach***  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**STAFF REPORT**

**TYPE OF CASE:** Special Exception  
**CASE NUMBER:** FMBSEZ2011-0003  
**CASE NAME:** Paradise Tropical Wines  
**LPA HEARING DATE:** January 10, 2012  
**LPA HEARING TIME:** 9:00 AM

**I. APPLICATION SUMMARY**

Applicant: Eric Malasky

Request: A Special Exception in the DOWNTOWN zoning district to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty fruit wines

Subject property: See attached **Exhibit A**

Physical Address: 159 Old San Carlos Boulevard

STRAP #: 24-46-23-W3-0050A.016A

FLU: Pedestrian Commercial

Zoning: DOWNTOWN

Current use(s): Retail

Adjacent zoning and land uses:

North: Retail  
DOWNTOWN  
Pedestrian Commercial

South: Retail  
DOWNTOWN  
Pedestrian Commercial

East: Retail  
DOWNTOWN  
Pedestrian Commercial

West: Hotel  
DOWNTOWN  
Pedestrian Commercial

## **II. BACKGROUND AND ANALYSIS**

### Background:

The applicant has requested a special exception in the Downtown zoning district to permit a 2-COP alcoholic beverage license in conjunction with consumption on premises for a retail specialty wine shop, in an existing retail location. Land Development Code (LDC) Section 34-1264(a)(2) requires a special exception to permit consumption on premises as the use, essentially a package store, cannot be approved administratively by the powers given to the Director in Section 34-1264(a)(1) due to its proximity to other establishments primarily engaged in the sale of alcoholic beverages within 500 feet.

The application does not include a request for any outdoor seating in conjunction with consumption on premises.

The applicant has provided an exhibit, **Exhibit B**, depicting the eight properties within 500 feet of the property that are currently licensed to allow consumption on premises of alcoholic beverages. These eight establishments include The Beach Pierside Grill, Top O' Mast Lounge, La Ola Surfside Restaurant, Pete's Time Out, Plaka Restaurant, Zushi Zushi Restaurant & Bar, Yucatan Beach Stand Bar & Grill, and Smokin' Oyster Brewery.

The applicant indicates that they intend to sell wines that are made in St. Petersburg Florida, and that are "high quality citrus, berry, and tropical fruit wines and wine related products." Tastings of the specialty wines will be requested at this location, involving the consumption of one-half (1/2) to one (1) ounce portions. The applicant indicates the package store will also include a gift section that will feature only Florida-made products such as bottled sauces, packaged dip mixes, and other locally-made wine-related products. The sale of these retail items is a use permitted by right in the Downtown zoning district. The consumption on premises and package sales of wine in sealed containers is the portion of the proposed use that requires the special exception.

The applicant's proposed package store will be located in the space currently occupied by the East Winds retail clothing store. The unit known as Tropical Sunset, which is also located on the subject property, is not included in the application for special exception. The applicant's proposed 936± square foot package store is shown on the provided floor plan, attached as **Exhibit C**.

Analysis:

The subject property is located in the Downtown zoning district within walking distance to Times Square from Old San Carlos Boulevard. Throughout this district many other establishments, generally restaurants with bars, serve alcohol on the premises. Thus the request for consumption on premises is compatible and appropriate at this location.

LDC Table 34-1 does not specifically list package stores among the uses permitted in the Downtown zoning district. The use, however, is most similar to that of bar or cocktail lounge, which is permissible in the Downtown zoning district by either administrative approval or special exception. An administrative approval is not allowable in this location, however, due to the separation requirements of LDC Section 34-1263(d) which requires a minimum 500' separation from a place of worship, religious facility, school, day care center, park, dwelling unit, or another establishment primarily engaged in the sale of alcoholic beverages.

The presence of visiting pedestrians transitioning between parking areas, retail stores, restaurants, the beach, and motels, is a long-established custom that will not be altered by approval or denial of the current request. The immediate vicinity is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential area or any other district. Furthermore, the Comprehensive Plan specifically contemplates that the Times Square area (i.e. Downtown Core Area) will include an increasingly diverse mix of commercial activities.

The applicant indicates their intent to operate between the hours of 10:00 am and 12:00 midnight, hours that are within the allowable external limits set forth in Town Ordinance 96-06, which prohibit service between 2:00 am and 7:00 am throughout Fort Myers Beach. Although the applicant has provided operation hours, in order to limit the use to these hours, or any other hours other than 7:00 am to 2:00 am daily, the Town Council may find that a condition is necessary to protect the public health, safety, and welfare.

Findings and Conclusions:

- 1. Whether there exist changed or changing conditions [that] make approval of the request appropriate.*

The Comprehensive Plan notes in the Consensus on Commercial Uses:  
"The present concentration of commercial uses in the Times Square

area is good for Fort Myers Beach. Despite severe congestion during peak season, Times Square has always provided an urban beach environment that does not exist anywhere else in Lee County, and which cannot be easily duplicated because of today's floodplain regulations. The recent CRA improvements have sparked a renewed interest in Times Square among most islanders and have spurred a healthy movement to upgrade existing buildings."

As contemplated in the Comprehensive Plan, the Times Square/Downtown area has continued to emerge as a vibrant urban core for the Town, and as such the area can support a more intensive variety of uses which is consistent with the applicant's request.

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

The subject property is located in what the Comprehensive Plan terms the Downtown Core. The Comprehensive Plan describes a vision for this area that "boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an 'Old Estero Island' character to the buildings."

Further, in both the Community Design Element and the Future Land Use Element, the Comprehensive Plan describes a vision for the Downtown Core/Times Square area as a "nucleus of commercial and tourist activities" with pedestrian oriented commercial uses that enhance the experience of both the resident and visitor. Again, the applicant's request is in keeping with this vision, by providing a venue for the purchase of unique Florida-made items in their retail store, including ancillary tasting of the specialty fruit wines.

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

The very nature of this application indicates that the requested use of consumption on premises is not a use allowable by right on the subject property. It is however, a use permitted by special exception. (See Section 34-1264(a)(2)).

The applicant's request is appropriate at this site due to the subject property's location in the Downtown Core Area. The request for a Florida wine specialty store is in keeping with the goals, objectives, policies and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown Core.

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

The proposed consumption application will have no negative effects on the environmentally critical areas and natural resources of Fort Myers Beach as the subject property is located in an established commercial district, landward of the coastal construction line(s) and far from environmentally critical areas and sensitive natural resources.

*5. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The subject property and the area immediately surrounding it, is within the Pedestrian Commercial future land use category and the Comprehensive Plan's vision of this area does not require that it be transformed from an intensively commercial area into a primarily residential district or any other use. It possesses a vibrant mix of uses, and as such, Staff feels the applicant's request is compatible and appropriate within its neighborhood.

*6. Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.*

The consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including, but not limited to §34-671 et seq. and 34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

### **III. RECOMMENDATION**

Staff recommends **APPROVAL WITH CONDITIONS** of the requested special exception for Consumption on Premises in conjunction with the package sales of specialty fruit wines. Staff feels that the consumption of one-half (1/2) to one (1) ounce tastings of the specialty Florida-made fruit wines is clearly incidental to the sale of these unique offerings, and that the service of such small portions of alcoholic beverages is not injurious to the public health, safety or welfare. The subject property is located in the Town's most intensive commercial development area, near Times Square in the Downtown zoning district, and is located in the Pedestrian Commercial future land use category which continues to have an intensive variety of uses that support the residents and tourists alike.

Recommended conditions for approval are as follows:

1. That the special exception be approved only for a 2-COP (beer and wine) alcoholic beverage permit to allow consumption on premises of specialty fruit wines and the package sales thereof. If an increase in the alcoholic beverage licenses series is sought, a new approval in accordance with the LDC will be required.
2. Consumption on premises is limited to the retail package store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan Exhibit C.
3. The 2-COP for consumption on premises is limited to tastings of one-half (1/2) to one (1) ounce servings to adults age 21 or above, who are interested in purchasing the specialty Florida fruit wines.
4. Sales of specialty wines for consumption off the premises must be in factory-sealed containers. At no time shall alcoholic beverages be sold "by the glass" for consumption on premises.
5. Hours of operation for consumption on premises shall be limited to the hours of 10:00 AM to 10:00 PM, daily. The package store may be open during hours outside of this restriction, but consumption on premises shall be limited to the hours listed herein.
6. The subject application does not include consumption on premises in conjunction with outdoor seating areas. All consumption (tasting) activities must take place inside the retail store.

#### **IV. CONCLUSION**

Regulations for the Downtown zoning district encourage an intensive variety of commercial uses, and many properties within the district have capitalized on the vision of the Comprehensive Plan in accordance with these regulations and are providing a mix of restaurants, bars, retail stores, hotel/motel uses, and parking that support the residents and visitors alike.

The LDC does not particularly address or give guidance to requests for consumption on premises for package store uses, although Florida Statutes 564.08 provides for wine tastings by licensed distributors or vendors within a licensed premise. It then falls to analysis and review of context and compatibility for considering the applicant's request. The area surrounding the subject property is one of the most intensive commercial areas of the Town, and aside from a minimal number of residential units, it is located generally away from the intensely residential areas of the island. The subject property is located in the Downtown zoning district with close proximity to Times Square from Old San Carlos Boulevard, where many other establishments, generally restaurants with bars, serve alcohol on the premises and include outdoor seating areas. Thus the request for consumption on premises in conjunction with the tasting of very small amounts of wine is appropriate at this location. When considering the context and compatibility of the subject property's requested use along with the applicant's provided hours of operation and tempered

with the conditions listed previously, Staff finds that the consumption on premises in conjunction with tastings of specialty fruit wines is a compatible and appropriate use.

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-88, Town Council should deny the request as provided in LDC Section 34-88(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested special exception. Staff has recommended conditions for the Town Council's convenience.

Staff recommends **APPROVAL** of the requested special exception, as conditioned.

Exhibits:

- A. Legal description
- B. Surrounding Properties with consumption on premises
- C. Proposed floor plan

**EXHIBIT A**

**Legal description of property**

24-46-23-W3-0050A.016A  
159 Old San Carlos Boulevard  
Fort Myers Beach, Florida 33931

LOTS 16 AND 17, BLOCK A, UNIT #2, ISLAND SHORES, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 9, AT PAGE 25, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, EXCEPT THAT PART OF LOT 17 DESCRIBED AS FOLLOWS:

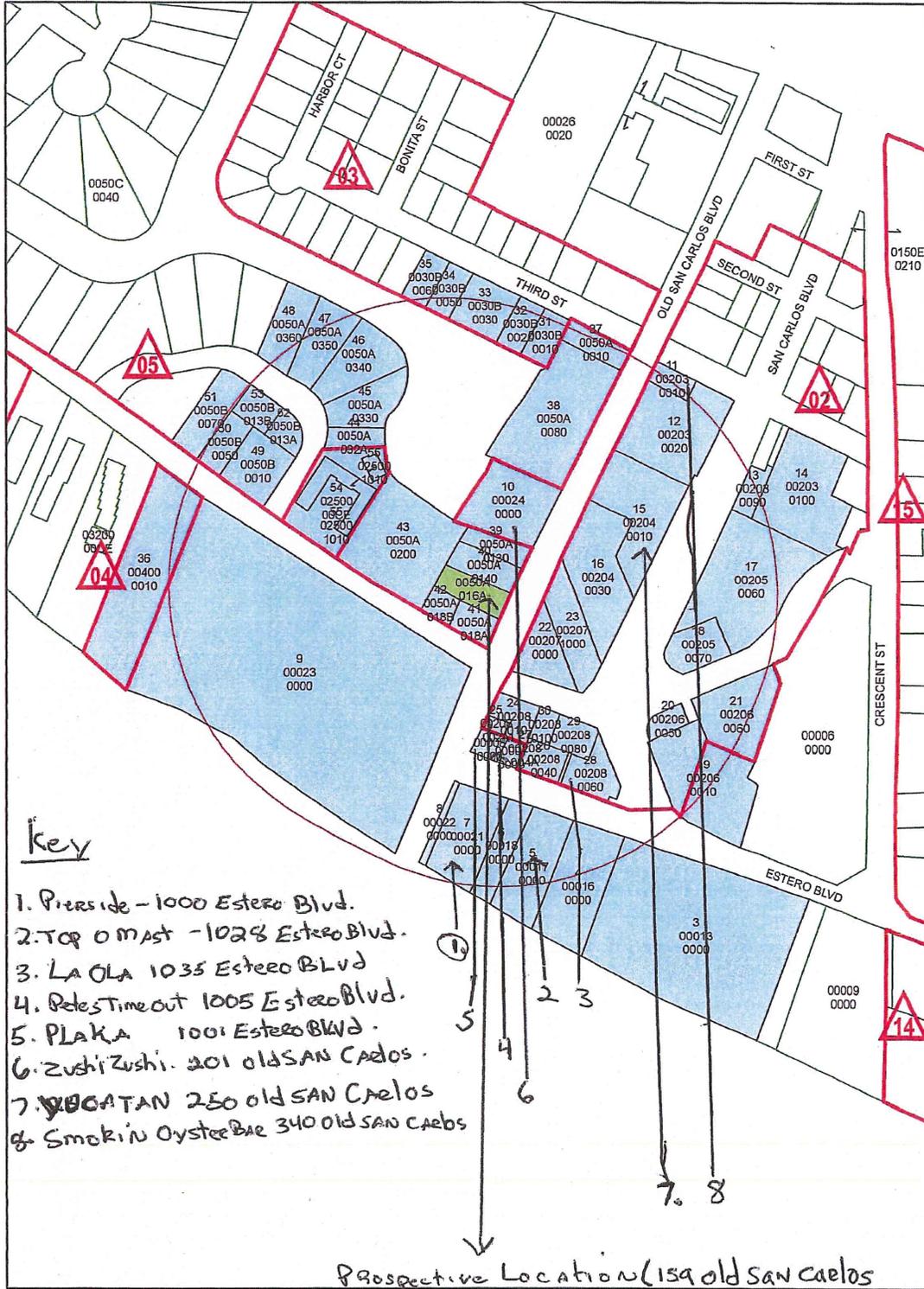
BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 17, RUN NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 17 FOR 16.50 FEET; THENCE RUN SOUTHEASTERLY PARALLEL WITH ESTERO BOULEVARD AS SHOWN ON SAID PLAT FOR 51.73 FEET TO A POINT 80 FEET, AS MEASURED ON A PERPENDICULAR, FROM THE WESTERLY LINE OF THE COUNTY ROAD AS SHOWN ON SAID PLAT; THENCE RUN SOUTHWESTERLY PARALLEL WITH SAID COUNTY ROAD FOR 8.58 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 17; THENCE RUN NORTHWESTERLY ALONG SAID SOUTHERLY LINE AND PERPENDICULAR TO SAID COUNTY ROAD FOR 53.62 FEET TO THE POINT OF BEGINNING; TOGETHER WITH AN EASEMENT FOR WALKWAY PURPOSES OVER AND ALONG A STRIP OF LAND 4 FEET IN WIDTH, LYING 2 FEET FROM EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

FROM THE SOUTHWESTERLY CORNER OF LOT 19, IN SAID BLOCK A, RUN NORTHWESTERLY ALONG ESTERO BOULEVARD FOR 82.80 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE: FROM SAID POINT OF BEGINNING RUN NORTHEASTERLY PARALLEL WITH SAID COUNTY ROAD FOR 59.59 FEET TO A POINT ON THE NORTHEASTERLY BOUNDARY OF THE HEREINABOVE DESCRIBED EXCEPTION.

# VARIANCE REPORT

10/13/2011

Subject Parcels : 1 Affected Parcels : 55 Buffer Distance : 500 ft



Key

1. Pier side - 1000 Estero Blvd.
2. Top O mast - 1028 Estero Blvd.
3. LA OLA 1035 Estero Blvd.
4. Petes Time out 1005 Estero Blvd.
5. PLAKA 1001 Estero Blvd.
6. Zushi Zushi. 201 Old San Carlos.
7. BOGATAN 250 Old San Carlos.
8. Smokin Oyster Bar 340 Old San Carlos.

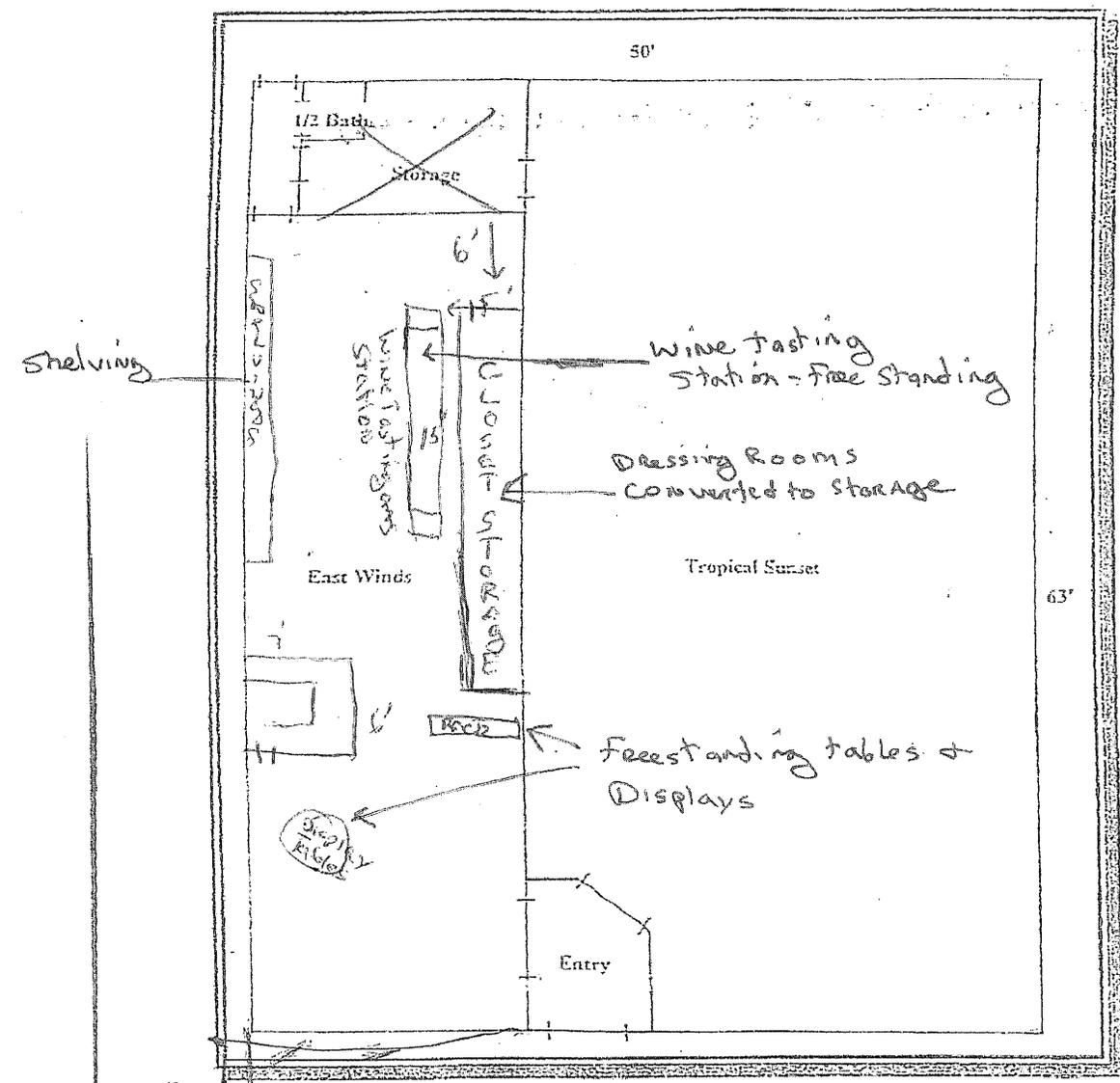
Prospective Location (159 Old San Carlos)



24-46-23-W3-0050A.016A

310 155 0 310 Feet

EXHIBIT ( C )



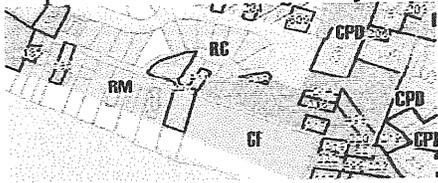
FLOORPLAN

stand up  
Bistro  
tables

Bench

Proposed floorplan

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



Zoning Division

**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:	Paradise Tropical Wines
Authorized Applicant:	Eric Malasky
LeePA STRAP Number(s):	24-46-23-W3-0050A.016A

Current Property Status:	Occupied Retail
Current Zoning:	Downtown
Future Land Use Map (FLUM) Category:	Pedestrian Commercial
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	FLUM Density Range: N/A

Action Requested	Additional Form Required
<input checked="" type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

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

**PART I - General Information**

**A. Applicant:**

Name(s):
Address: Street: 1710 SW 15th Avenue
City: Cape Coral State: FL Zip Code: 33991
Phone: 239-699-7861
Fax: 239-673-9260
E-mail address: ERIC@ParadiseDeliCapeCoral.com

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

<input type="checkbox"/>	Owner (indicate form of ownership below)
<input type="checkbox"/>	Individual (or husband/wife)
<input type="checkbox"/>	Land Trust
<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Subdivision
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Association
<input type="checkbox"/>	Condominium
<input type="checkbox"/>	Timeshare Condo
<input checked="" type="checkbox"/>	Authorized representative (attach authorization(s) as Exhibit AA-1)
<input type="checkbox"/>	Contract Purchaser/vendee (attach authorization(s) as Exhibit AA-2)
<input type="checkbox"/>	Town of Fort Myers Beach (Date of Authorization: _____)

**C. Agent authorized to receive all correspondence:**

Name: ERIC Malasky
Mailing address: Street: 1710 SW 15th Avenue
City: Cape Coral State: FL Zip Code: 33991
Contact Person: ERIC MALASKY
Phone: 239-699-7861 Fax: 239-673-9260
E-mail address: ERIC@ParadiseDeliCapeCoral.com

**D. Other agents:**

Name(s): Debra Malasky
Mailing address: Street: 1710 SW 15th Avenue
City: Cape Coral State: FL Zip Code: 33991
Phone: 239-443-6387 Fax: 239-673-9260
E-mail address: Debbie@ParadiseDeliCapeCoral.com

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

**PART II – Nature of Request**

**Requested Action (check applicable actions):**

<input checked="" type="checkbox"/> Special Exception for: <i>Wine Sales, Retail with tastings (lops)</i>
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

**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
<i>No wa</i>	

**PART IV – Property Ownership**

<input type="checkbox"/> Single owner (individual or husband and wife)
Name: <i>SEE ATTACHED</i>
Address: Street: _____
City: _____ State: _____ Zip Code: _____
Phone: _____ Fax: _____
E-mail Address: _____



<input type="checkbox"/> 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?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes:
Subdivision name:
Plat Book Number:     Page:     Unit:     Block:     Lot:
If no:
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.
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**C. STRAP Number(s):**

24-46-23-W3-0050A, 016
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**D Property Dimensions:**

Area: 6044 total     square feet     acres
Width along roadway: 52 feet     Depth: 64 feet

**E. Property Street Address:**

159 Old San Carlos Fort Myers Beach 33931
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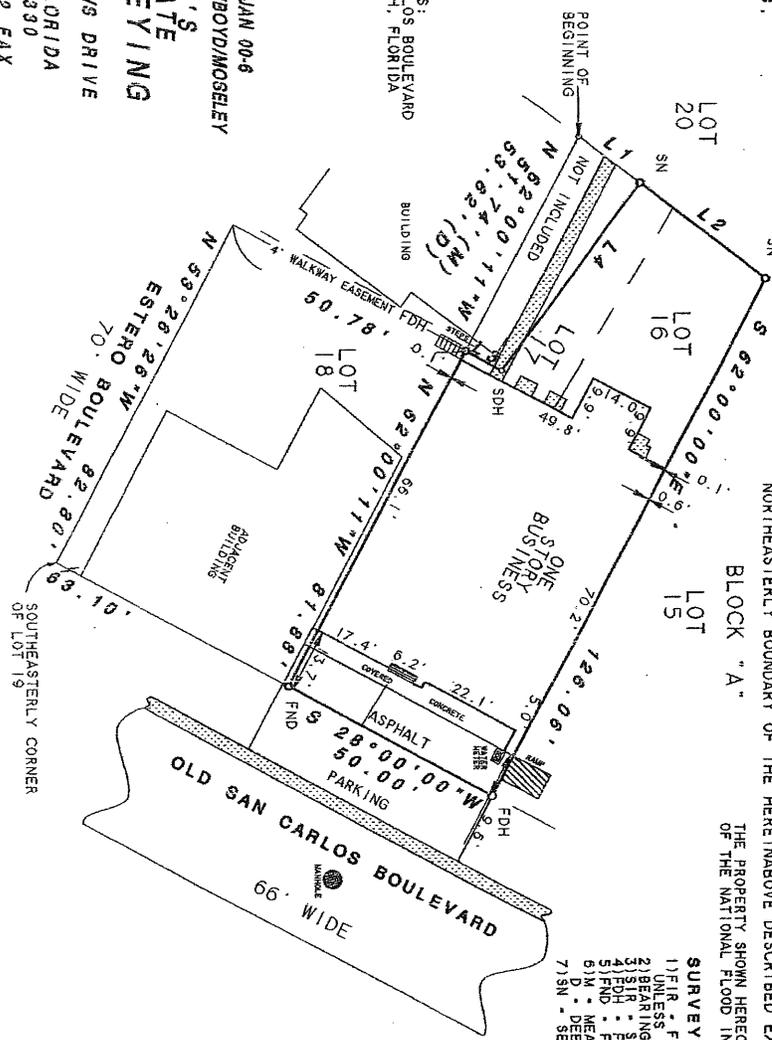
# LAND SURVEY

LINE	BEARING	DISTANCE
L 1	N 36°05'49"E	10.50'
L 2	N 36°35'43"E	34.08'
L 3	N 28°00'00"E	0.81'
L 4	N 53°20'36"W	49.84' (M) 51.73' (D)

THIS SURVEY IS CERTIFIED TO:  
 GEORGE D. L. JENKINS,  
 AMSCOUTH BANK,  
 ROETZEL & ANDRESS,  
 ATTORNEYS TITLE INSURANCE  
 FUND, INC.

FILE DISK: JAN 00-6  
 CREW: WEBB/BOYD/MOSELEY  
 ATTORNEY'S  
 REAL ESTATE  
 LAND SURVEYING  
 INC.  
 1930 PARK MEADOWS DRIVE  
 SUITE 9  
 FORT MYERS, FLORIDA  
 (941) 277-7330  
 (941) 277-7332 FAX

PROPERTY ADDRESS:  
 39 OLD SAN CARLOS BOULEVARD  
 FORT MYERS BEACH, FLORIDA



LOTS 16 AND 17, BLOCK "A", UNIT #2, ISLAND SHORES, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 9, AT PAGE 25, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, EXCEPT THAT PART OF LOT 17 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 17, RUN NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 17 FOR 16.50 FEET; THENCE RUN SOUTHEASTERLY PARALLEL WITH ESTERO BOULEVARD AS SHOWN ON SAID PLAT FOR 51.73 FEET TO A POINT 80 FEET AS MEASURED ON A PERPENDICULAR FROM THE WESTERLY LINE OF THE COUNTY ROAD AS SHOWN ON SAID PLAT; THENCE RUN SOUTHWESTERLY PARALLEL WITH SAID COUNTY ROAD FOR 8.58 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 17; THENCE RUN NORTHWESTERLY ALONG SAID SOUTHERLY LINE AND PERPENDICULAR TO SAID COUNTY ROAD FOR 53.62 FEET TO THE POINT OF BEGINNING; TOGETHER WITH AN EASEMENT FOR WALKWAY PURPOSES OVER AND ALONG A STRIP OF LAND 4 FEET IN WIDTH, LYING 2 FEET FROM EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: ALONG ESTERO BOULEVARD, FOR 82.80 FEET TO THE POINT OF BEGINNING OF SAID CENTER LINE; FROM SAID POINT OF BEGINNING, RUN NORTHEASTERLY PARALLEL WITH SAID COUNTY ROAD FOR 59.59 FEET TO A POINT ON THE NORTHEASTERLY BOUNDARY OF THE HERETIMABOVE DESCRIBED EXCEPTION.

THE PROPERTY SHOWN HEREON IS LYING IN ZONE A12 OF THE NATIONAL FLOOD INSURANCE PROGRAM. ELEVATION - 12.

**SURVEYORS NOTES:**  
 1) F.I.R. - FOUND 1/2" IRON ROD  
 2) UNLESS SHOWN OTHERWISE  
 3) BEARINGS PER RECORDED DEED  
 4) S.D.H. - FOUND BRILLIANT RED \*LB6594.  
 5) F.I.D. - FOUND NAIL & DISK  
 6) M - MEASURED  
 7) D - DEED  
 7) 1/8" - SET NAIL & CAP \*LB6594.

DATE:  
 JANUARY 12, 2000

THIS SURVEY IS HEREBY CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 177, FLORIDA STATUTES, CHAPTER 472, FLORIDA STATUTES AND CHAPTER 617, HAS AND IS CORRECTLY SURVEYED AND THE BEARING OF THIS SURVEY IS NOT A CERTIFICATION OF TITLE. THIS REPORT AND IS NOT A CERTIFICATION OF TITLE. ZONING OR FREEDOM FROM ENCUMBRANCES. THESE SURVEY BEARS THE SIGNATURE AND SEAL OF THE SURVEYOR AND MAPPERS. THIS DRAWING, SKETCH, PLAT OR MAP IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT VALID. NO COPIES SHALL BE MADE WITHOUT WRITTEN AUTHORIZATION.

LABOR: GADSDEN, SIMPSON AND MAPPER #4294  
 NOT VALID WITHOUT EMBOSSED SEAL  
 JOB NUMBER: 00-021

# JENKINS FAMILY INVESTMENTS U.S.A

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George Jenkins

519-842-9017

Courier address: 107 Broadway  
Tillsonburg, Ontario  
N4G 3P5

Mailing address: Box 280  
Tillsonburg, Ontario  
N4G 4H5

**21 October 2011**

TO WHOM IT MAY CONCERN

Dear Sir/Madam:

RE: 159 OLD SAN CARLOS

---

I, George Jenkins owner of the above noted property, hereby confirm that I consent and acknowledge that Eric Malasky on behalf of Paradise Deli & Market will be applying to obtain a COP2 liquor licence from the State of Florida for use at the above noted property.

Should you require anything further, please feel free to contact me at 519-842-9017.

JENKINS FAMILY INVESTMENTS



George Jenkins  
Encl

Print

**YAHOO!** MAPS

powered by **Nokia**

159 Old San Carlos Blvd, Fort Myers Beach, FL 33931-2143

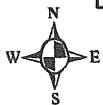


When using any driving directions or map, its a good idea to double check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning

# VARIANCE REPORT

10/13/2011

Subject Parcels : 1 Affected Parcels : 55 Buffer Distance : 500 ft

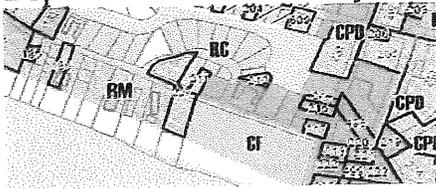


24-46-23-W3-0050A.016A

310 155 0 310 Feet



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



Zoning Division

**Supplement PH-A**

**Additional Required Information for a  
Special Exception Application**

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name:	PARADISE TROPICAL WINES
Authorized Applicant:	ERIC MALASKY
LeePA STRAP Number(s):	24-46-23-W3-0050A-016A

Current Property Status:	occupied Retail
Current Zoning:	Downtown
Future Land Use Map (FLUM) Category:	Pedestrian Commercial
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	FLUM Density Range: N/A

**Requested Action:**

<input type="checkbox"/>	Use of premises in the EC (Environmentally Critical) zoning district for:
<input checked="" type="checkbox"/>	Use of premises in the <u>Downtown</u> zoning district for:
	<u>Pedestrian Commercial - Retail as is currently, property</u>
	<u>needs special exception to qualify for Sale and</u>
	<u>Consumption of Alcohol Permit to sell specialty Fruit wines</u>





Paradise Tropical Wines, Inc.

Proposed location: 159 Old San Carlos. Fort Myers Beach, FL

Concept: We are requesting a special exception to allow a retail specialty wine and gift store at the above address. The location is currently used as a retail establishment, selling clothing and accessories. It is located in the pedestrian commercial district which fits perfectly into our target market area. Our wines are all made in St Petersburg Florida and consist of high quality citrus, berry and tropical fruit wines and wine related products. Florida Fruit Wines have a large draw in vacation destinations throughout Florida including both Disneyworld and Epcot Center in Orlando. Locally there are independent distributors in Naples, at Tin City and at areas similar to those. The concept even though it is geared toward retail of our unique berry, citrus and tropical fruit wines, involves the sale of alcohol and further, due to the uniqueness of the product, tastings are required as our wines mimic traditional wines and must be tasted in order to sell. We have a price range from about \$20.00 to \$50.00 with attractive eye catching labels that are fun to drink and are a large hit in vacation destinations. Our gift portion of the store will feature only Florida made products such as Bottled sauces, packaged dip mixes and other locally made wine related knick knacks. Since we will be allowing customers to taste our wines in ½ ounce portions we will require a state license for consumption on premises. We will be applying for a COP2 license to accommodate this activity permission has been granted by the landlord. We will not be serving drinks on premises at any time our consumption will be tastings only. We would like to potentially add non alcoholic smoothies to the menu eventually, those would be on a to go basis only. With respect to potential impact on surrounding businesses we feel that we will be a positive draw toward Old San Carlos and the master plan for the downtown district. To alleviate problems with congestion on the sidewalk we will leave the outside as is with a wicker bench and a couple chairs, maybe some cleaning up and dressing up, but a place where people can congregate and not cause traffic problems. Further we are aware that one of the biggest concerns on Fort Myers Beach is traffic congestion, we do not feel that our concept will add to that in any way as we intend to remain retail and rely on pedestrian tourist traffic for our customer base. In other words we do not intend on becoming a destination.

The proposed location is within the pedestrian commercial zone on the beach master plan. It is also within 500 feet of park, as well as residential dwellings and therefore would require a special exception to be approved via public hearing according to Fort Myers Beach Statute 3412-64, regarding sale of alcohol and existing restrictions.

Our specific idea for this location as with all locations is to help further the vision of the community and remain in accordance with local ordinances and regulations obviously. We do not want to be a bar, nor do we desire to be a package store but rather a uniquely Floridian specialty wine and gift shop. We feel our concept will fit into the FMB comprehensive plan for development of old San Carlos by providing a lively, inviting, comfortable and safe environment for locals as well as tourists.

Paradise Tropical Wines  
Eric P Malasky  
1710 SW 15<sup>th</sup> Avenue  
Cape Coral, FL 33991  
239-699-7861

December 19, 2011

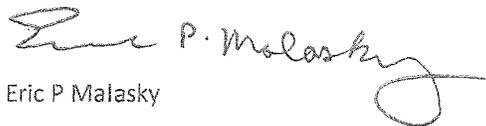
Mr. Josh Overmyer  
Town of Fort Myers Beach  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931  
239-765-0591

Josh,

As requested here is a copy of our floor plan both existing and proposed. As I hope you can see what I plan to do is leave the dressing rooms in place, drywall over the front and turn that into a small storage area. Also we will add a self standing wine and smoothie tasting station in front of that area. There will be a refrigerated unit underneath the station. The only other addition at this time would be shelving added for wine displays opposite the tasting station as well as self standing display tables placed toward the front of the store.

Our intended hours of operation for our wine tastings and wine sales will be no earlier than 10am, 12pm on Sundays, until no later than midnight or normal hours of operation of other retailers on the beach. We are unique in that we want to provide unique citrus, berry and tropical fruit wines made in Florida. Our business model is simply a retail store with the ability to taste our unique products before you buy them. A taste consists of approximately ½ to 1 oz of wine. So I guess the short answer to your question would be that the tastings will be done during normal operating hours at a customers request for a sample and those hours of operation will be from 10am to 10pm which could extend to midnight during tourist season if that is allowed.

Sincerely,

  
Eric P Malasky