

1. Requested Motion:

Meeting Date: Feb 6, 2012

Approve Resolution 12-03 granting 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 wines

Why the action is necessary:

An administrative approval is not allowable in this location 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.

What the action accomplishes:

2. Agenda:

Consent
 Administrative
 Public Hearing

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff
 Town Attorney

5. 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 proposed use 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 LPA held a public hearing on the request at their January 10, 2012 meeting and voted 6-0 to approve the Special Exception with conditions.

Please note that the meeting minutes from the January 10, 2012 meeting are still in draft form at the time of the Council meeting. Staff anticipates that they will be officially adopted at the February 13, 2012 LPA meeting.

Attachments:

- Draft Council Resolution 12-03
- LPA Resolution 2012-002
- Draft LPA Minutes from January 10, 2012 meeting
- LPA Packet including Staff Report from January 10, 2012

6. Alternative Action:

- 1. Deny the requested Special Exception
- 2. Approve the requested Special Exception subject to alternative or additional conditions

7. Management Recommendations:

Approve the requested Special Exception subject to the conditions recommended in the Staff Report and by the LPA

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 12- 03
FMBSEZ2011-0003 (Paradise Tropical Wines)

WHEREAS, applicant Eric Malasky has requested a special exception in the DOWNTOWN zoning district to allow a 2COP 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 TOWN COUNCIL 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/DENY** the applicant's request for a special exception in the DOWNTOWN zoning district to allow a 2COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty 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 (wine tasting) of specialty 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 store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan **Exhibit C**.*
3. *The 2COP 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 retail 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** 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 Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____ and upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	AYE/NAY	Bob Raymond, Vice Mayor	AYE/NAY
Alan Mandel	AYE/NAY	Jo List	AYE/NAY
Joe Kosinski	AYE/NAY		

DULY PASSED AND ADOPTED THIS _____ day of **FEBRUARY, 2012**.

Town Council of the Town of Fort Myers Beach

By: _____
Larry Kiker, Mayor

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

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 2COP 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 2COP alcoholic beverage license in conjunction with consumption on premises (wine tasting) and package sales of specialty 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 (wine tasting) of specialty 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 store located at 159 Old San Carlos Boulevard, currently operated as East Winds, as shown on the attached floor plan **Exhibit C**.*
3. *The 2COP 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 retail 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** that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is** 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** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will** 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 Smith and seconded by LPA Member Plummer and upon being put to a vote, the result was as follows:

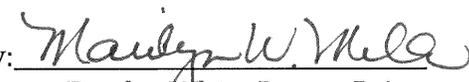
Joanne Shamp, Chair	AYE	Al Durrett, Member	AYE
Alan Smith, Member	AYE	John Kakatsch, Member	AYE
Hank Zuba, Member	AYE	Jane Plummer, Member	AYE

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:

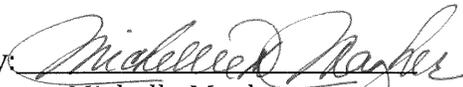
By: 
Michelle Mayher
Town Clerk

EXHIBIT A

Legal description of property

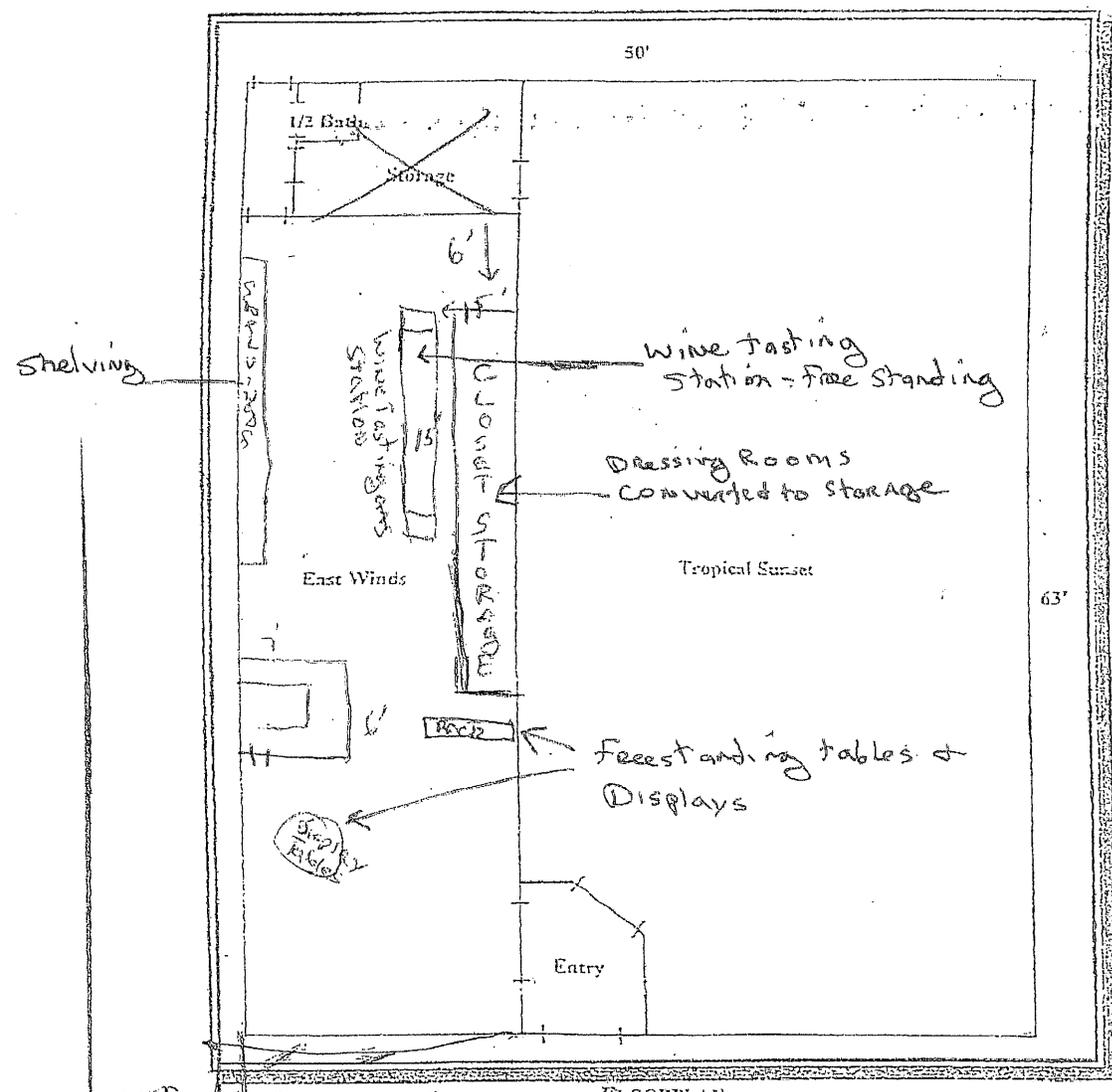
24-46-23-W3-0050A.016A
159 Old San Carlos Boulevard
Fort Myers Beach, Florida 33931

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.

EXHIBIT C



FLOORPLAN

Stand up
Bistro
tables

Proposed floorplan



MINUTES

**FORT MYERS BEACH
LOCAL PLANNING AGENCY
TOWN HALL – COUNCIL CHAMBERS
2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931**

January 10, 2012

I. CALL TO ORDER

Meeting was called to order at 9:01 a.m. by Joanne Shamp; other members present:

Alan Smith
John Kakatsch
Bill Van Duzer
Hank Zuba
Al Durrett
Jane Plummer

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Chapman, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of December 13, 2011

MOTION: Mr. Kakatsch moved to approve the December 13, 2011 minutes; second by Ms. Plummer.

VOTE: Motion passed 6-0.

V. PUBLIC HEARINGS

A. LPA Resolution 2012-001 Honoring Carleton Ryffel

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and WHEREAS, Carleton Ryffel was a member of the LPA from June 2009 to June 2011; and WHEREAS, during his membership on the LPA, Carleton Ryffel provided exemplary service to the Town of Fort Myers Beach:

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

CARLETON RYFFEL IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CONTRIBUTED HIS EXPERTISE IN LAND LANNING TO BENEFIT THE LOCAL PLANNING AGENCY OF THE TOWN, PROVIDING INSIGHT AND RECOMMENDATIONS TO ADDRESS ISSUES OF CONCERN TO THE WELFARE OF THE RESIDENTS AND VISITORS, AND TO SUPPORT THE LOCAL COMMERCIAL INTERESTS, AS VICE-CHAIRMAN OF THE LPA, HE CREATED A POSITIVE ENCIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATION. HIS CONTRIBUTIONS WORKED TO INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

MOTION: The foregoing Resolution was adopted upon a motion by LPA Member Kakatsch and seconded by LPA Member Zuba.

Ms. Shamp recognized the work and dedicated service of Vice Chair Ryffel to the LPA and the Town of Fort Myers Beach.

VOTE: Motion passed, 6-0.

B. FMBSEZ2011-0003 Paradise Tropical Wines

Ms. Shamp opened the hearing at 9:10 a.m.

Zoning Coordinator Chapman entered the Affidavit of Publication into the record.

Ms. Shamp asked the LPA Attorney to swear in the witnesses; and LPA Attorney Miller swore in the witnesses.

Ms. Shamp asked if any LPA Member had any ex-parte communication regarding this item. Mr. Smith – none; Mr. Zuba – none; Mr. Durrett – none; Ms. Shamp – none; Mr. Kakatsch – none; and Ms. Plummer – none.

Zoning Coordinator Champman presented comments for FMBSEZ2011-0003, Paradise Tropical Wines, on behalf of the Town of Fort Myers Beach. She displayed a map of the subject property located at 159 Old San Carlos Boulevard. She reported the applicant was requesting the Special Exception in a location that currently had a land use of Pedestrian-Commercial and was in the Downtown zoning district in order to allow a 2-COP alcoholic beverage license in conjunction with consumption on premises and package sales of specialty fruit wines for a retail specialty wine shop in an existing retail location. She added that the only component of the special exception was the request for consumption on premises with wine tastings that involved consumption of one-half to one ounce portions and the package sale of wine in sealed containers of the proposed use. She displayed the applicant's proposed floor plan in a unit known as Tropical Sunset, and noted the applicant was not requesting any outdoor consumption and the hours would be 10:00 a.m. to midnight. She explained the special exception request was required because the subject site was located within 500 feet of another site that had consumption on premises. She briefly reviewed the supporting regulations for special exceptions which the Town Council would hear and decide:

1. *Whether there exist changed or changing conditions [that] make approval of the request appropriate* – no request for a change to the existing property and the request remains consistent with the intended use of the area.
2. *Whether the request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan* – the subject property is located in the Downtown Core and the Comprehensive Plan envisions the area as a vibrant area with a mix of uses.
3. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use* – the special exception request was due to a locational standards and was consistent for request.
4. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources* – proposed use should have no negative effects on the environmentally critical areas or natural resources. She noted the subject property was already located in one of the Town's most highly developed areas and the request was compatible and appropriate within its neighborhood.
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* – staff did not anticipate any damage, hazard or nuisance and the LPA was able to condition the request.
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 would be required to comply with the applicable standards in the Fort Myers Beach LDC including but not limited to Chapter 34-671 et seq. and 34-1264. She reported that staff found, with some conditions, would be in compliance with the applicable general zoning codes.

She stated that staff recommended approval of the special exception in the Downtown Zoning District to allow 2-COP [beer and wine] alcoholic beverage license in conjunction with wine tasting and package sales at the location of 159 Old San Carlos Boulevard with six conditions:

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 factor-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 a.m. to 10:00 p.m., 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.

Eric Malasky, applicant, showed an example of the size of the wine tasting sample cup (1/2 to 1 ounce) that would be used at the tastings. He explained the basis for conducting wine tastings was due to the customers wanting to taste the uniqueness of the fruity Florida wine prior to purchase.

Mr. Smith questioned the 2-COP approval request and if he had any consideration for beer tasting in the future.

Mr. Malasky responded in the negative; and stated it would be for the wine, wine-related items, and gift items.

Mr. Zuba questioned the appearance of staff's proposed restriction to "fruit" wines.

Zoning Coordinator Chapman stated it was not staff's intent to restrict it to fruit wines; however, that was the label the applicant gave to the Town for their product. She explained "fruit" could be removed from the wording.

Mr. Zuba noted it appeared on the drawing that the bathroom had been eliminated from the existing store.

Mr. Malasky explained there would be a public bathroom and it would be maintained.

Ms. Plummer asked the applicant regarding the proposed condition for the hours of operation for the tastings.

Mr. Malasky stated he had no problem with the proposed hours for the tastings.

Discussion was held concerning the wine distributor used; Mr. Malasky's store location in Cape Coral; and selling other items in the subject store such as food.

Ms. Shamp questioned aspects of Chapter 34-1263 and 1264 as it applied to the special exception request and noted that there was one existing package store on Fort Myers Beach with consumption on premises which had a separate door to the bar section from the package store area and on premise consumption; and discussed whether or not this could be approved according to code and would it be setting precedent.

LPA Attorney Miller responded by noting in Chapter 34-1263(d), Location of Package Stores, it stated “*no package store or other establishment primarily engaged in the retail sale of retail liquor*”. She would research in the State statutes the definition of “liquor” since she believed there was a separate definition of liquor, beer, and wine.

Community Development Director Fluegel pointed out that within Chapter 34-1263 the sale for off-premises of consumption it established the permissibility of the use itself.

Discussion was held regarding Chapter 34-1264, sale for off-premise consumption, locational standards as applicable to package stores, and the wine tasting which was on-premise consumption.

Mr. Zuba also questioned if approving the resolution would cause a proliferation of similar matters.

Community Development Director Fluegel noted these types of requests would be handled through a special exception application process.

Discussion ensued regarding the location of the subject property as it pertained to be in the Downtown Core and it was noted that the establishment was within 500’ to a park, and staff noted there were other other establishments within 500’ of the property currently licensed to allow consumption on-premises.

LPA Attorney Miller noted that the sale of liquor and wine were regulated by the State under different chapters - Chapter 565 for liquor and Chapter 564 for wine. It was her opinion that the 2-COP only applied to beer and wine.

Discussion ensued regarding the difference between the State’s definition of beer, wine, and liquor.

Community Development Director Fluegel pointed out that if approved, the LPA would be granting two which would specifically say that the only State liquor license the Town could sign off zoning approval would be for a 2-COP.

Public Comment opened.

John Lallo, Owner of Pete’s Time Out, was sworn in by LPA Attorney Miller. He pointed out the location of his business in Times Square, welcomed Mr. Malasky to the area, and discussed his belief that Mr. Malasky would offer unique items. He suggested the LPA may want to limit how many ounces the attendees could have at a tasting.

Public Comment closed.

Mr. Smith discussed his viewpoint that the subject business would be an appropriate use in the Times Square location.

Mr. Zuba explained why he would be in support of the special exception; questioned why the applicant was being limited to “fruit” wines; and the floor plan should be modified to indicate the bathroom.

Ms. Shamp noted the plan did indicate a half-bath; discussion ensued regarding the location of the bathroom on the floor plan.

Zoning Coordinator Chapman stated staff would obtain a clear floor plan indicating the bathroom.

Messrs. Durrett and Kakatsch welcomed Mr. Malasky and his business to Fort Myers Beach.

Ms. Plummer recounted her experience visiting a similar type of store in St. Augustine.

Ms. Shamp asked if the LPA wanted to consider limiting the number of samples per customer.

Consensus was not place a limit on the number of samples per customer and to remove the word “fruit”.

MOTION: Mr. Smith moved that the LPA recommend to the Town Council to 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 wines, with any approval subject to the recommended conditions of approval. 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 not exist that make the request approval, as conditioned appropriate;
2. The requested special exception, as conditioned, is 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 all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, will protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, will be compatible with existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34;

second by Ms. Plummer.

VOTE: Motion passed, 6-0.

Ms. Shamp closed the hearing at 9:40 a.m.

Town of Fort Myers Beach

January 10, 2012

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C. COP Ordinance

Community Development Director Fluegel reported the proposed ordinance would be assigned a number prior to presentation to Town Council.

Ms. Shamp opened the public hearing on the COP Ordinance at 9:42 a.m.

Community Development Director Fluegel stated the Notice of Public Hearing was posted.

LPA Attorney Miller read the title of the COP Ordinance into the record:

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE III, DIVISION 4 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "CONVENTIONAL ZONING DISTRICTS" AMENDING SECTION 34-652, "EC (ENVIRONMENTALLY CRITICAL) ZONING DISTRICT" BY ADDING "EXPANSION OF AREA DESIGNATED FOR SERVICE OF ALCOHOLIC BEVERAGES" AS PERMITTED USE; AMENDING CHAPTER 34, ARTICLE IV, DIVISION 5 IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ALCOHOLIC BEVERAGES", AMENDING SECTION 34-1261, DEFINITIONS; AMENDING SECTION 34-1264, "SALE OR SERVICE FOR ON-PREMISES CONSUMPTION" BY ADDING REGULATIONS GOVERNING THE EXPANSION OF ON-PREMISES CONSUMPTION INTO THE EC ZONING DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Community Development Director Fluegel recapped staff's presentation of the proposed ordinance at last month's LPA Meeting; pointed out that to facilitate the understanding of the proposed regulatory approach there was an Excel spreadsheet included in the agenda item back-up which broke down the proposed regulatory approach on an issue-by-issue basis; and reported staff would present today their recommendation for the best approach to regulate COP in the EC Zoning District. He thoroughly discussed Exhibit A, Section 34-652. EC, Section 34-1261. Definitions, and Section 34-1264. Sale or Service for On-Premise Consumption:

- As it pertained to establishment of permitted uses;
- Noted that language was added under (d) (8) "*Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in §34-1264(g)(1).*";
- Examined Section 34-1261. Definitions as it pertained to changing definitions so that they were consistent with other chapters as well as the Town Code of Ordinances (i.e. beach, EC Zoning District, Erosion Control Line, etc.
- Reviewed page 10, §(g), Regulations Applicable to Expansion into EC Zoning District, Expansion of area designated for permit, and §(g)(1) Regulations Applicable to Expansion into EC Zoning District and subparagraphs (a) Area of Expansion and (b) Defined Area, (i) Standard conditions of approval (1-7) and ii, iii, iv (1-5);
- Examined page 12 §(2), Procedure for Approval of COP in the EC Zoning District, subparagraphs a, b, c (Commercial Planned Development, 1-2).

Public Comment opened.

John Lallo, Owner of Pete's Time Out in Times Square, reported he spoke last night with John Richard the owner of Shipwreck, and Brad Benson the owner of Wahoo Willie's, and they were both unable to

attend today's LPA meeting. He reported that the three of them agree there should be equal enforcement up and down the beach concerning the subject issue. He stated that the following comments would be his own and he relayed comments he received from tourists who questioned why they could not drink on the beach. He explained why he disagreed with the requirement for plastic cups to have the identity of the bar. He commented on the definition sunset and noted that it lasted for approximately 45 minutes after the sunset and the time usually changed every day.

Lee Melsek, resident and representing the Board of Directors of the Fort Myers Beach Civic Association, stated they opposed the expansion of the sale of alcohol onto the bathing beaches, and it was the Association's intention to challenge the ordinance at the Council level.

Larry Arnold, resident, noted that he received many emails and was contacted by people on the beach who were in favor of the COP. He discussed his views that supported designated areas for COP in the EC Zone which would give the Town the ability to control unwanted and illegal consumption on public beaches and would allow for the protection of environmentally sensitive areas. He discussed his belief on how the designated COP would benefit the businesses and the Town.

John Albion, President of the Fort Myers Beach Chamber of Commerce, stated he was glad to see the matter addressed and an attempt to create a "fairness" doctrine in the area. He noted his concern for the proposal in the ordinance that the Town Manager has the authority to reduce the area of expansion (unless there was a hurricane or other emergency that reduced beach access) and suggested instead it should fall under the elected Town officials. He also addressed his concerns regarding the "rope and post" requirement and discussed the basis for his objection to the business name on the plastic cups as it pertained to business insurance liability issues.

Tom Babcock read his statement into record which questioned if it was the Town's intention to expand the COP into the EC Zone (environmentally critical zone) then the ordinance needed further consideration. He discussed his opinion that proposed ordinance should not be interpreted as though the Town Council wanted to have expansion of the COP in the EC Zone, rather it should be that the Council wanted appropriate and fair regulation of this issue. He felt the LPA was not required to change the LDC to allow the expansion of alcohol sales onto the beach. He suggested that visitors should be informed that they are not permitted to bring coolers with alcohol onto the beach and that the only places to consume alcohol were in the areas designed to allow consumption of alcohol. He noted he believed extra enforcement costs would be incurred and asked if the Town was prepared to pay for that enforcement. He expressed his opinion that allowing expansion of the COP as an administrative approval would eliminate due process (neighbors needed to be informed and permitted time for public comment); and how the wording of the proposed ordinance conflicted with other sections of the LDR (i.e. separating a section with rope and bollards require a special exception). He stressed the importance of the proposed draft ordinance and requested that all the issues be fully researched, discussed, and resolved to the LPA's satisfaction.

Pat Cenello, Owner of Nemo's on the Beach, noted he had seven liquor licenses and had been in existence for 30 years. He applauded the attempt for creating a level playing field through the proposed draft ordinance and stated he would like to see the ordinance approved.

Annie Babcock, resident, explained that she was speaking with the perspective of a resident and not a business owner. She asked the LPA to vision the downtown area in 5 years and in 10 years, and then asked if they saw families, young people, young couples, older couples, “spring breakers”, or people striving to make ends meet on the beach. She discussed how it appeared there was not a notice of today’s meeting in the two newspapers nor was there anything easily visible on the Town of Fort Myers Beach website regarding the meeting or the agenda; however, she did find information on the COP and the meeting in the archives on the website. She recounted how she walked the beach two times a day and noted the differences in attitude and behavior and the difference in ages in the areas as she passes them; the difference between in the level of respect she encountered in each area as she passed (i.e. residential, business area). She reviewed her concerns regarding the proposed draft ordinance and how it would change the character of the beach; she stressed the need for specific enforcement if the ordinance was approved. She asked the LPA to make the ordinance specific for containers to the Downtown area, to consider the effect as it pertained to turtle season; remember additional enforcement costs, **rethink the size of the 1’ X 2’ 1:24:39??**. She discussed the importance of keeping in mind the rights of others.

Maury Gingrich, seasonal resident, questioned the definition of the Downtown Zoning Area.

Community Development Director Fluegel described the boundaries of the Downtown Zoning Area.

Maury Gingrich, seasonal resident, addressed a previous comment to tell visitors not to bring their coolers to Fort Myers Beach was the same as telling visitors not to come to Fort Myers Beach.

Leslee Donovan, bartender and manager at the Gulfshore Grill, explained that her customers consisted of locals and tourists and all they wanted to do is put their feet in the sand and have a beverage. She recounted the Gulfshore Grill’s experience with Lee County prior to the Town’s incorporation as it pertained to COP. She explained how the Gulfshore Grill worked to comply with the Town’s regulations as they currently exist. She noted her objection to having the business name on the beverage cups, and to the rope and post requirement noting potential safety issues to pedestrians/bicyclists since there were no lights on the beach.

Steve Malakaikis, Owner of Plaka Restaurant in Times Square, stated he also spoke for the owner of another Times Square business. He discussed the support of the rope and post requirement; an objection to the business name on the plastic cups; and the support of what staff was trying to accomplish through the proposed ordinance.

Public Comment closed.

Mr. Durrett discussed the rope and post aspect of the proposed ordinance, and suggested there was a better method to define an area such as but not limited to potted plants. He noted the potential for liability issues with the use of rope and post. He also addressed the criteria of “half an hour after sunset” and how it was not fair to the public; and disagreed with the requirement for businesses to have their name on the cups.

Mr. Kakatsch stated he had the same concerns as Mr. Durrett plus he wanted to know the potential cost for enforcement.

Ms. Plummer agreed that having a business name on a cup would probably hurt businesses due to liability issues and be an additional expense. She discussed her objection to rope and posts and how they interfered with the line of vision down the beach and suggested investigating other methods to indicate areas of containment (i.e. uniform signage); how containment of patrons on the business property should be a matter for the business to enforce; that sea oats were as intrusive as rope and post; and that she was appalled regarding the number of flags, chairs, jet skis, and parasails were actually left on the beach overnight. She stated she was in favor of consumption on premise and that the Town needed to provide rules, regulations, and guidelines for the businesses.

Ms. Shamp discussed the purpose and creation of the EC Zone; and explained her belief that the EC Zone was created to protect the Town's greatest asset which was the beach, and how this major expansion of COP onto the beach would be a significantly greater precedent than anything that was previously set. She addressed her belief that the proposed ordinance did not address regulating the few existing businesses which was presented to the LPA a year or two ago, rather it dealt with expanding alcohol consumption in an unprecedented fashion throughout the island. She discussed her beliefs that the LPA historically had not supported expansion of COP; that if the proposed ordinance was approved, the Town could not "backtrack" later; that the purpose of the LPA which included but was not limited to protecting the Town's resources from commercial intrusion; and that the LPA should have an option to send to Council a proposed ordinance that does not allow for expansion but does regulate the existing businesses. She explained how she did not approve of the proposed ordinance; however, she would work to make it the best it could be to present to Town Council. She reviewed her concerns and commented on the following sections in Exhibit "A" Section 34-652.EC (Environmentally Critical) Zoning District:

- Page 3, (d)(8) – expanding the consumption of alcohol in an environmentally critical zone, and questioned if food services would be expanded onto the beach as well.

Community Development Director Fluegel stated the business would be permitted to do food service; however, it was the alcohol license which was the issue.

Discussion ensued regarding the food sale requirement of serving alcohol and serving percentages in conjunction with an SRX rider on licenses.

Ms. Shamp questioned if the proposed ordinance should be changed to include the "service of food" on Page 3, (d)(8).

LPA Attorney Miller recommended adding "and any required food service".

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1261. Definitions:

- Page 4, "beach", addressed consistency throughout the LDC and the word "that" should be included.

LPA Attorney Miller agreed with the recommendation.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1261. Definitions and Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 5, noted a scrivener’s error on the second line from the bottom should be “proposed” and not “proposes”.
- Page 11, (b) Defined Area, “*The area of expansion of a COP licensed premises extending seaward into the E zoning district, shall be limited to no more than 33% of the land area...*” and suggested saying “the distance”.

LPA Attorney Miller noted it stated it was “*limited to no more than 33%*” and gives the option of doing less.

Discussion ensued regarding linear distance measurement, the 33% limitation, and Mean High Water Line.

LPA Attorney Miller concurred that the measurement was a linear distance and not square footage.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(1), questioned if the word “seaward” should be included as follows: “...upland licensed premise must be located immediately seaward adjacent to and contiguous with the EC zoning district.”

LPA Attorney Miller responded in the negative and explained that there was the requirement that it has to be the same ownership.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 11, (b)(i)(3), questioned if the requirement to have the business name on the cups was a liability or a responsibility; and explained her opinion that the purpose was to contain the cups within an area and was essential to enforcement.
- Page 12, (iv), noted she did not like the appearance of rope and post; however, they were probably the lesser of two evils. She commented how she more strongly disliked the proliferation of signs she has seen on current properties that serve alcohol. She described how rope and post would have to be installed as it pertained to turtle season according to the DEP. She discussed her interpretation of the Comp Plan to re-vegetate the beach.

Discussion was held regarding beach furniture and how it was addressed in the Town codes.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit “A” Section 34-1264. Sale or Service for On-Premises Consumption:

- Page 12 and 13, (2), Procedure for Approval of COP in the EC Zoning District, (a) Administrative Approval and (b) Special Exception, she noted her opposition to having the option for an administrative approval and discussed her viewpoint that the administrative approval process would remove the rights of neighboring property owners right to comment on the matter.

- Page 13, (c) Commercial Planned Development, (2), - she questioned how many businesses currently exist outside the Downtown Zoning District with COP permitted in EC.

Community Development Director Fluegel reported there were five such establishments.

Ms. Shamp stated then they would circumvent the Commercial Planned Development for Special Exception.

Community Development Director Fluegel explained that this was to bring the businesses into compliance; they were already approved for COP in the EC.

Ms. Shamp continued reviewing her concerns and commented on the following sections in Exhibit "A" Section 34-1264. Sale or Service for On-Premises Consumption:

- Discussed her concerns that there was no education provision for residents or visitors so they would know the Town's alcohol policies.

Discussion ensued regarding the Town's current open container law, enforcement, practicality of enforcement, and how to educate the public on the topic; and how Council would need to give consideration to these matters.

Community Development Director Fluegel reported the State's alcohol licensing require dominion and control over the licensed premise; and staff felt that the rope and post method was the best way of dominion and control which was based mostly on observations last year of how the current licensed premises worked. He added there appeared to be three methods to accomplish dominion and control: 1) rope and post, 2) decks, and 3) physical security details; and discussed each method.

Ms. Shamp pointed out that according to code currently no signs were permitted on the beach and in the downtown there was information as to whether signs could advertise alcohol; and asked if any other regulations would be necessary to address signage facing the beach.

Community Development Director Fluegel explained which signage was addressed in the sign ordinance and which was addressed in the proposed COP ordinance.

Mr. Smith discussed the need to address the request from the business owners for a level playing field to attract patrons; the importance of the downtown area to tourism; the need to investigate options to establish dominion for each business; his opposition to the business names on cups; the proposed restriction concerning when to stop serving after "sunset"; and questioned enforcement issues.

Community Development Director Fluegel reported that it would continue to be a Code Enforcement issue, and explained why there needed to be rules in order to enforce.

Mr. Zuba discussed the historical nature of the COP issue and how it related to the urgency of the proposed ordinance. He questioned how staff determined the expansion area should be 1/3.

Community Development Director Fluegel explained how staff determined that it would provide each business with some degree of expansion and provided some degree against erosion and tidal events; but also, recognized the public's right to use the beach.

Mr. Zuba asked what extent (minimum or maximum amount) the establishments had that already had permission to serve on the beach.

Community Development Director Fluegel stated that many of them already go to the water line; and noted that the Beach Pub was at the minimal.

Discussion ensued regarding the degree of expansion permitted; licensing fees which were already set and fees pertaining to administrative approval; what could happen if the draft ordinance was not approved; ways to educate the public and the responsibility of the public to question what the regulations were pertaining to open containers; the use of rope as an alternative to rope and posts; and the State's requirement of dominion and control.

Community Development Director Fluegel explained that outside the Downtown area the ordinance addressed resorts and the definition of resorts.

Discussion continued regarding potential enforcement issues; the use of rope and post; and the use of less intrusive control methods.

Mr. Kakatsch asked if it was staff's opinion that the current Sherriff and Town Code Enforcement staff would be adequate to enforce the proposed ordinance.

Community Development Director Fluegel responded in the affirmative; and he added that he shared a copy of the proposed ordinance with the Sherriff's Office.

Discussion was held concerning the expansion area for areas other than the downtown; and potentially unique variance requests; and potentially different requirements for the south end of the island.

MOTION: Ms. Plummer moved to recess at p.m. and reconvene at 12:30 p.m.; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0.

Recess at 12:10 p.m. – Reconvened at 12:30 p.m.

Ms. Shamp reviewed a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

1. Considerable discussion regarding the rope and post (bollard) as the means of dominion and control - 4/2 in favor (show of hands)
2. Whether half an hour after "sunset" and "service and consumption" was an appropriate time frame and wording - 3/3 in favor of not changing the wording (show of hands). Discussion was held.
3. Requiring business names on cups – 3/3 in favor (show of hands). Discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to require business names on the cups.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period.

4. The 33% or a maximum of "X" linear feet for distance – discussion was held.

Community Development Director Fluegel reviewed the basis for staff's recommendation to as it pertained to recommending "half an hour after sunset" with respect to service and consumption on the beach.

Ms. Shamp continued to review a list of specific items of interest that was mentioned by LPA Members during the previous discussion period and asked for a show of hands regarding the 33% or a maximum of "X" linear feet for distance – 5/1 were in favor of changing half an hour to one hour.

MOTION: Mr. Zuba moved to recommend approval of the proposed ordinance with the change to "one hour after sunset" and suggest that staff define the maximum number of linear feet; second by Mr. Durrett.

Ms. Shamp reiterated her desire to give Town Council an option regarding regulating existing businesses and not include expansion.

LPA Attorney Miller questioned the earlier comments regarding changing language (i.e. scrivener's error, etc.)

Community Development Director Fluegel stated staff would handle those recommended changes/corrections.

Ms. Shamp asked for a show of hands to determine who was in favor of offering a vegetative option to rope and post. The show of hands revealed 5/1 in favor of offering the vegetative option.

Discussion was held concerning a vegetative option; and the food service amount for SRX requirements.

Consensus was that the LPA agreed with the proposed ordinance with a change to "one hour after sunset", and staff acknowledged the other concerns which they would address (i.e. define linear feet).

MOTION: Mr. Zuba restated the motion: that now therefore be it resolved, that the LPA recommends that the Town Council approve and adopt the proposed Town Ordinance to amend Chapter 34, Article IV, Division 5, Alcoholic Beverages, in the Town Land Development Code and recommends the following findings of fact and conclusions with regard thereto: Proposed Findings of Fact and Conclusions of Law:

- 1) The proposed amendments are in the best interest of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach and the LPA hereby recommends that the Town Council adopt the proposed amendments to the Land Development code with changes as noted below.

2. The LPA hereby recommends the following revisions to the proposed amendments:
“one hour after sunset provision versus thirty minutes”
Second by Mr. Smith.

VOTE: Motion approved, 4-2; Ms. Shamp and Mr. Kakatsch dissenting.

Ms. Shamp closed the Public Hearing at 1:05 p.m.

MOTION: Ms. Plummer moved to adjourn the LPA and reconvene as the HPB; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0.

**ADJOURN AS LOCAL PLANNING AGENCY AND RECONVENE AS HISTORIC
PRESERVATION BOARD
1:06 P.M.**

VI. HISTORIC PRESERVATION

Ms. Plummer stated she had nothing to report since the HAC did not have a meeting and has no meeting planned because they were waiting the re-opening of the Mound House to do a plan for the first visionary sign.

Mr. Durrett requested to be appointed to the Historic Advisory Committee.

Ms. Plummer acknowledged the request.

Ms. Shamp questioned how the meetings were noticed.

Mr. Plummer explained that at the last meeting it was decided not to have another meeting until it was determined when the Mound House would open. She added the Board was contacted to learn if they had any items for an agenda, but until the date was known there was no agenda to set.

Ms. Shamp noted Ms. Plummer was the Chair; however, she asked the status of the Vice Chair.

Discussion was held regarding Chair and Vice Chair of the HAC; and the composition of the HPB's representation on the HAC.

MOTION: Ms. Plummer moved to appoint Mr. Kakatsch as Vice Chair of the HPB; second by Ms. Shamp.

VOTE: Motion carried, 6-0.

MOTION: Mr. Kakatsch moved to adjourn the HPB and reconvene as the LPA; second by Mr. Smith.

VOTE: Motion carried, 6-0.

**HISTORIC PRESERVATION BOARD ADJOURNED AND RECONVENED AS THE LOCAL
PLANNING AGENCY
1:12 P.M.**

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Zuba – inquired as to the state of the Seafarer’s planning and organization.

Community Development Director Fluegel reported the County needed to come forward and apply for an amendment to the CPD zoning on the subject property and that the Town staff met with the County regarding the matter.

Mr. Zuba – asked if Community Development Director Fluegel was representing the LPA as it pertained to the subject property development and uses on Estero Boulevard as well as the parking issues.

Community Development Director Fluegel explained staff would review the application and basically informed the County the need to go through the process. He mentioned there would be legal issues to address once the County applied.

Mr. Zuba – encouraged staff to address the issue of traffic.

Community Development Director Fluegel noted that the County had already been informed that when they applied they would need to submit a traffic study too.

Ms. Plummer – stated she wanted to go on record as being concerned about the pond at the north end of the island and the growing bacteria and the related health issues. She added that since it was private property, the Town should address the property owner regarding health and liability issues. She suggested the Town should step-up their enforcement of removing chairs and jet ski equipment at that end of the beach.

Mr. Kakatsch – complimented the Holiday Inn on the new sign. He questioned if the Old Fort Myers Beach Marina had reached as far as they were going towards the water.

Community Development Director Fluegel stated he was under the impression that the property owner had a development order still had some lower profile improvements towards the beach. He explained he would have to pull the development order to remember the specifics.

Ms. Shamp – reported some members of the public requested her to address the lighthouse sign which came before the HPB that had been denied a historic designation. She questioned if the lighthouse sign had been designated as a structure.

LPA Attorney Miller reported they had come in for a variance.

Ms. Shamp – asked since there were new LPA members who had not been through the CIP process if the Community Development Director could explain to the LPA why the Town was having a referendum for the amount of money to be potentially be spent for a Town Hall; and if the referendum passed would there be a role the LPA would play.

Community Development Director Fluegel gave a brief description of the CIP process as it pertained to the referendum for a Town Hall.

LPA Attorney Miller mentioned the various options regarding a Town Hall; and she reported the two informational meetings for the public on the Town Hall would be held tonight at 6:30 p.m. and on January 23, 2012 at 6:30 p.m.

Mr. Durrett – no items or reports.

Mr. Van Duzer – no items or reports.

Mr. Smith – no items or reports.

VIII. LPA ATTORNEY ITEMS

LPA Attorney Miller had no items or reports.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – mentioned the sign ordinance and reported the implementation was going extremely well. He noted all five 7/11 stores came into compliance; staff was working with Holiday Inn; there were approximately 40 signs not in compliance and staff had issued notices.

Ms. Plummer discussed her belief that if there was an identifiable sign that was uniform with size, color, etc. designed by the Town to place on the rope and post regarding alcohol consumption on the beach it would be helpful.

Discussion was briefly held regarding the wording in the proposed ordinance regarding (“no alcohol beyond this point”) and standardized signage.

X. LPA/HPB ACTION ITEM LIST REVIEW

Ms. Shamp thanked Mr. Kakatsch for representing the LPA at Town Council meetings. She reviewed the LPA/HPB Action List from December 13, 2011:

- Beach Raking – remains TBD

- LPA Resolution 2011-XX PWVL – no representation needed; Community Development Director gave a brief update; if comprehensive changes are made it would come back to the LPA.
- 216 Connecticut Street – TBD; discussion was held.
- Sign ordinance - TBD; briefly discussed.

Future Work Activities

- Rights-of-way, residential connection – TBD; briefly discussed.
- Stormwater – TBD; briefly discussed.
- IPMC – staff in the process of finding a replacement for Code Officer.
- COP in EC – to move up to “Resolutions Before Town Council”; staff to transmit memo to Council; Mr. Zuba to represent the LPA at Council.
- EAR – TBD; next step would be stakeholder workshops and analysis. Community Development Director noted they anticipated FEMA asking for a community rating system which would have a profound effect on flood insurance rates; and he noted this would increase staff time on the matter and then the Comp Plan work would be pushed back.
- Post-Disaster Reconstruction & Recovery – requested joint meeting with Town Council; Community Development Director noted how what happened with FEMA would relate to this topic and how the Comp Plan policies tied into this matter.

Ms. Shamp announced the next LPA meeting would be held on February 14, 2012.

XI. PUBLIC COMMENT

Public Comment opened.

Garr Reynolds, resident, commented on how he believed the current LPA members operated differently from past LPA members; recounted his experience on various committees throughout his lifetime; and described his view of an effectively working group. He hoped that the proposed COP ordinance would not be approved.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Durrett, seconded by Mr. Kakatsch
Mr. Smith – no items or reports.
to adjourn.

VOTE: Motion approved, 6-0.

Meeting adjourned at 1:56 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

- End of document.

DRAFT



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:

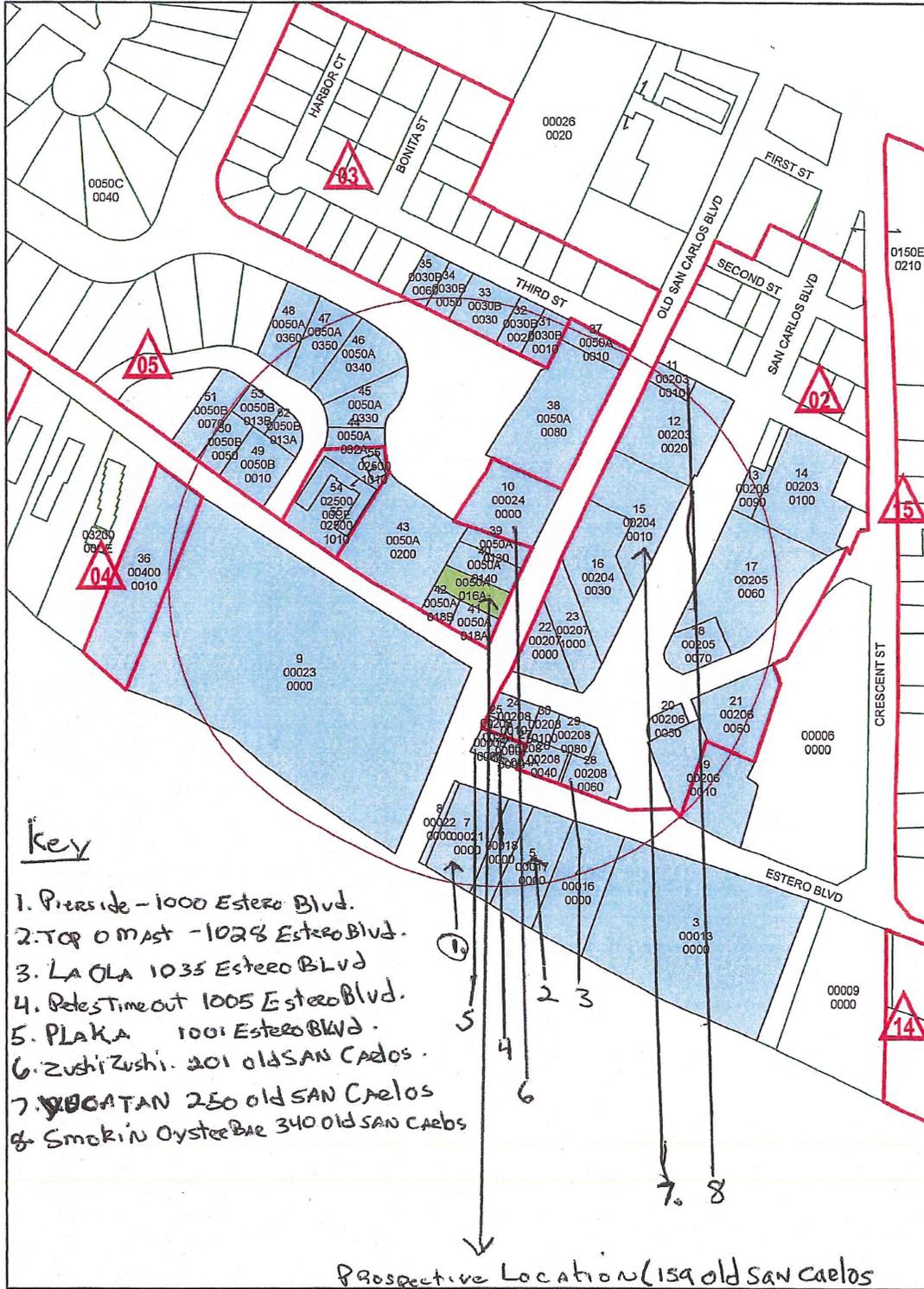
BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 17, RUN NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 17 FOR 16.50 FEET; THENCE RUN SOUTHEASTERLY PARALLEL WITH ESTERO BOULEVARD AS SHOWN ON SAID PLAT FOR 51.73 FEET TO A POINT 80 FEET, AS MEASURED ON A PERPENDICULAR, FROM THE WESTERLY LINE OF THE 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. Pierside - 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

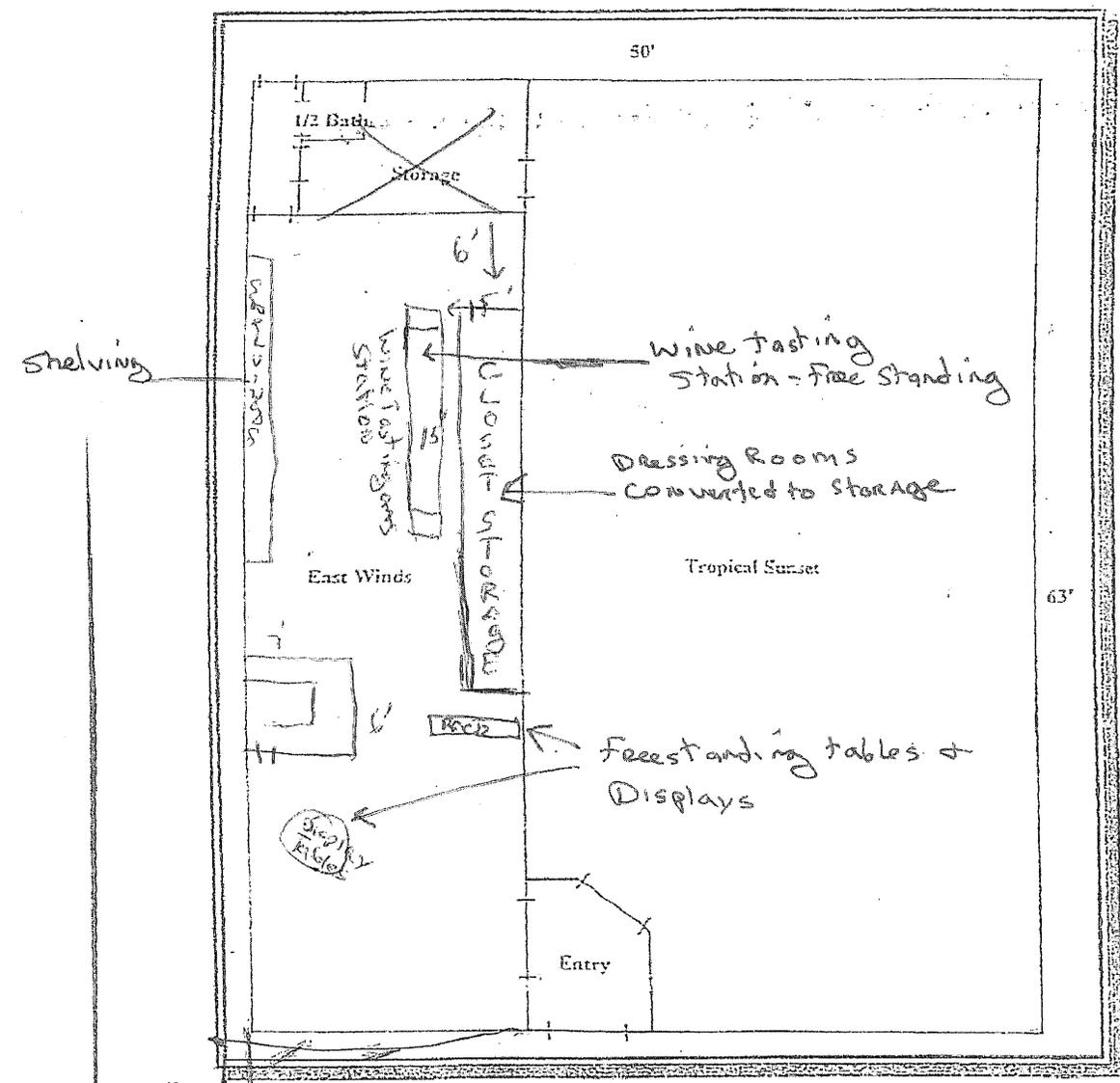
Prospective Location (159 Old San Carlos)



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

310 155 0 310 Feet

EXHIBIT (C)

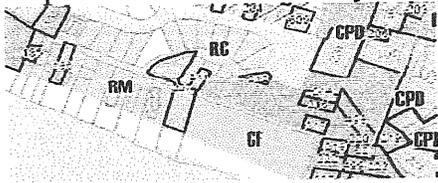


stand up
Bistro
tables

FLOORPLAN

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.
--

C. STRAP Number(s):

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

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

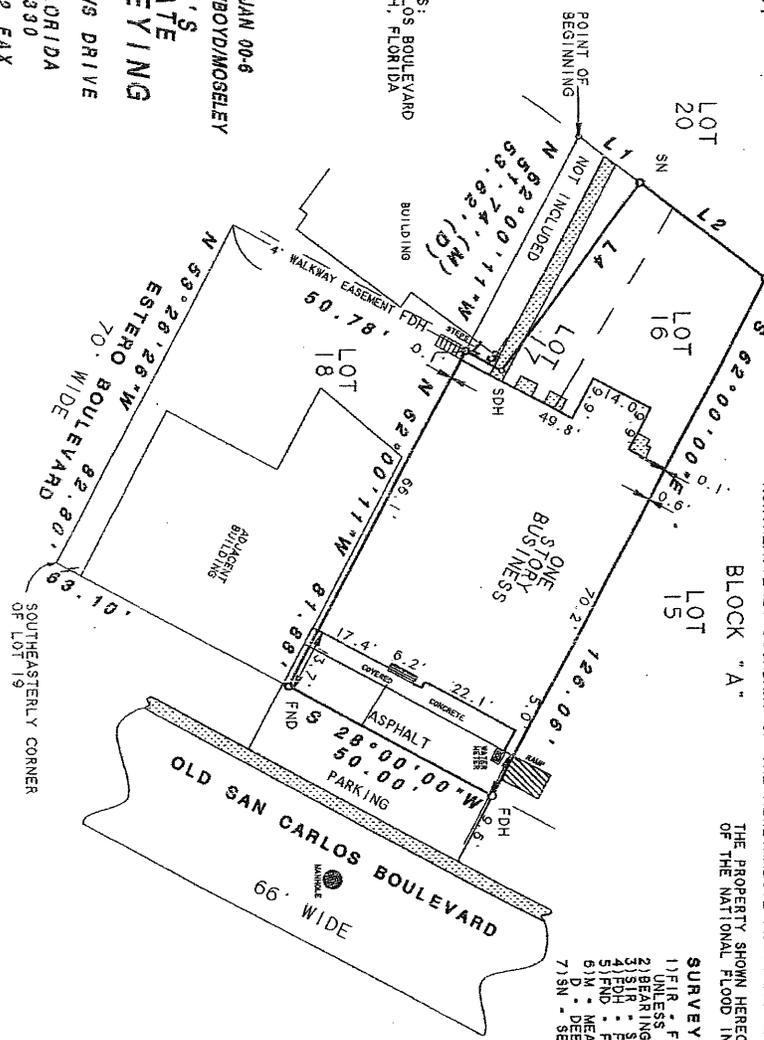
LAND SURVEY

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



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

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, RUN 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 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.

- 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
 - 8) 715N - 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 CORNER SURVEY AND THE REASON OF THIS CERTIFICATION IS THAT THE SURVEY HAS BEEN MADE IN ACCORDANCE WITH THE STANDARDS AND PRACTICES OF THE SURVEYING PROFESSION AND THAT THE SURVEYOR HAS BEEN LICENSED BY THE STATE OF FLORIDA AND HAS BEEN REGISTERED AS A PROFESSIONAL SURVEYOR AND MAPPING ENGINEER AND THAT THIS DEEDING, SKETCH, PLAT OR MAP IS FOR INSTRUMENTAL PURPOSES ONLY AND IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND SEAL OF THE SURVEYOR AND MAPPING ENGINEER AND IS NOT VALID UNLESS IT BEARS THE WRITTEN AUTHORIZATION OF THE CLIENT.

LABOR: GADSDEN, SIMPSON AND MAPPER #4294
 NOT VALID WITHOUT EMBOSSED SEAL

JOB NUMBER: 00-021

JENKINS FAMILY INVESTMENTS U.S.A

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

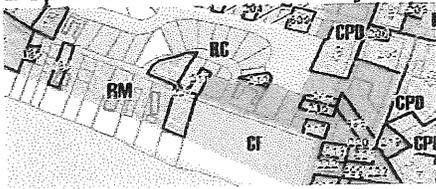


24-46-23-W3-0050A.016A

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 second</u>
	<u>consumption of Alcohol permit to sell specialty Ferit 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 15th Avenue
Cape Coral, FL 33991
239-699-7861

December 19, 2011

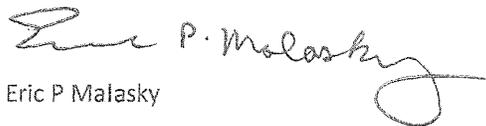
Mr. Josh Overmyer
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931
239-765-0591

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