

GeoView Map

Lee Property Appraiser GeoView Map



Map printed: 8/3/2011 4:29 PM



Aerial Imagery

2010 Hi-Res (1/2 foot)

Parcels and Streets

Parcel Lines

Street Centerlines

Delinquent Tax Parcels

Planning and Zoning

Coastal Const. Control Line

1978

1991

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Hearing Examiner Decision

HEARING EXAMINER DECISION

SPECIAL PERMIT: CASE 93-12-09-SP-02
APPLICANT: JADMIGA R. MIHALOFF, in reference to SAND BAR
RESORT HOTEL, INC.
ORIGINAL HEARING DATE: December 9, 1993
CONTINUED HEARING DATE: December 23, 1993

I. APPLICATION:

Filed by JADMIGA R. MIHALOFF, 5480 Estero Boulevard, Fort Myers Beach, FL 33931 (Applicant/Owner).

Request is for a special permit in the RM-2 (Residential Multiple Family) district for consumption on premises and outdoor seating (Zoning Ordinance Section 202.03). The Applicant wants to add an outdoor bar to an existing hotel/motel use.

The subject property is located at 5480 Estero Blvd., (San Carlos/Estero Blvd. intersection left to corner of Dakota Street), Fort Myers Beach, in Section 33, T46S, R24E, Lee County, Florida. (District #3)

The Strap # as furnished by the Applicant is: 33-46-24-02-00006.0010

II. STAFF RECOMMENDATION: DENY

The Department of Community Development Staff Report was prepared by Pam Houck. The staff report is incorporated herein by this reference.

III. HEARING EXAMINER DECISION:

The undersigned Lee County Hearing Examiner APPROVES the Applicant's request and grants a Special Permit in the RM-2 (Residential Multiple Family) district for consumption on premises and outdoor seating (Zoning Ordinance Section 202.03) for the real estate described in Section VIII. Legal Description WITH THE FOLLOWING CONDITIONS:

1. The Applicants will plant a salt-tolerant native vegetative Type A Buffer along both property lines at the rear of the site for the full length of the site up to the seawall. The buffer will be such that the tiki (chickee) hut from which the food and beverages will be served will not be visible from the beach access.
2. The hours of operation of the restaurant shall be between the hours of 7:00 a.m. until 9:30 p.m., Sunday through Thursday, and from 7:00 a.m. until 10:30 p.m., Friday through Saturday.
3. There shall be no outdoor entertainment or loud music associated with the restaurant.
4. Food and beverage service from the restaurant will be limited to guests of the Sand Bar Resort Motel, Inc. The Applicants shall post a prominently displayed sign indicating that the restaurant is for guests only. There shall be no advertising of the restaurant except in connection with advertising for the hotel operation at the Sand Bar Resort.
5. The service area of the restaurant shall be limited to room service, the tiki hut(s), and the pool and recreation area located within the seawalled portion of the Sand Bar Resort Motel, Inc.

IV. HEARING EXAMINER DISCUSSION:

The Applicant, Jadmiga R. Mihaloff, in reference to the Sand Bar Resort Motel, Inc., is requesting a special permit in the RM-2 (Residential Multiple Family) district for consumption on premises and outdoor seating. The subject site is a 23,850+-square-foot parcel located at 5480 Estero Boulevard, Fort Myers Beach.

The Sand Bar Resort consists of twelve units, ten of which are rented and two of which are maintained for personal use. The Applicant has requested this special permit to allow for the outdoor seating, and consumption of beer and wine on premises (2-COP) in conjunction with a small-scale restaurant. The Applicant is permitted by right to have a Group II Restaurant as a subordinate use pursuant to Section 528.C.3, of the Lee County Zoning Ordinance. However, since they are within 500 feet of a residential use, they are required to obtain a special permit to allow them to serve alcoholic beverages. Dwelling units under separate ownership are within 500 feet of the subject property and are located to the northwest, northeast across Estero Boulevard, and southeast across Dakota Street (which is a public beach access). The restaurant, which is proposed to be located near the seawall, is approximately 30 feet from the nearest dwelling unit which is located adjacent to the northwest property line. Since the proposed restaurant is a subordinate use allowed pursuant to Section 528 of the Zoning Ordinance, it does not require additional parking.

The subject property is a narrow parcel (90 feet wide) with frontage on both Estero Boulevard and Dakota Street. Dakota Street is also a public beach access. The property is approximately 265 feet deep and abuts the Gulf of Mexico on the rear or southwesterly side.

Staff has recommended denial because they believe that the service of beer and wine in conjunction with a Group II restaurant at the proposed location will have a deleterious effect on surrounding properties and the immediate residential neighborhood. They also assert that the location adjacent to the beach and public access to the beach creates the potential for this subordinate use to attract beach visitors, and to become a nuisance to the surrounding residential neighborhood. Finally, they contend that it is inconsistent with Policy 5.1.5 of the Lee Plan which speaks to the protection of residential uses from the encroachment of uses that are destructive to the character and integrity of the residential environment.

A large contingent of neighbors appeared at the hearing, and an even larger number signed petitions and sent letters opposing the request. They were understandably concerned with what such a use would have on their neighborhood. They were of the opinion that their neighborhood would become another "Times Square" because of the consumption on premises of beer and wine.

However, in the opinion of the undersigned Hearing Examiner, allowing beer and wine to be sold in the outdoor portion of a guest-oriented restaurant, with the conditions imposed, will have less impact upon the residential neighbors than if the Applicant were allowed to create the restaurant without the conditions that can be imposed in conjunction with the granting of the Special Permit. The greatest impact would appear to be the addition of a restaurant on the site; something the Applicant may do as a matter of right. If the Applicant had not applied for this special permit, she could have added the restaurant without any of the time, location and buffering conditions imposed by the undersigned Hearing Examiner, and she can serve beer and wine indoors. It would appear that it is preferable to permit the consumption of beer and wine on the outside portion of the site in exchange for the greater safeguards afforded the neighbors by the imposition of the conditioned enumerated above. If the special permit request were to be denied, the restaurant would be able to operate for additional hours, it would not have the prohibition against outdoor entertainment or music, and there would be no buffering requirements.

Therefore, based upon the foregoing, the special permit, as conditioned, is approved.

V. FINDINGS AND CONCLUSIONS:

Based upon the staff report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

- A. There is no negative impact on the intent of the Zoning Ordinance as a result of the granting of the special permit, conditioned as set out above.
- B. That the granting of the special permit, conditioned as set out above, is consistent with the goals, objectives, policies and intent of the Lee Plan, as last amended, because the creation of a restaurant that does not serve beer and wine will protect the residents less than granting the COP as conditioned above.
- C. That the special permit, conditioned as set out above, meets or exceeds all performance and locational standards set forth for the proposed use.
- D. That the special permit, conditioned as set out above, is consistent with the densities, intensities and general uses set forth in the Lee Plan.
- E. That granting the special permit, conditioned as set out above, will protect, conserve and preserve environmentally critical areas and natural resources.
- F. That the special permit, conditioned as set out above, will be compatible with existing or planned uses and will not cause damage, nuisance, hazard or other detriment to persons or property.
- G. That the location of the requested special permit does not place undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the use(s) which will be developed in conjunction with the Special Permit.
- H. That the requested use is in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Lee County Zoning Ordinance, as last amended.
- I. That granting the requested special permit, conditioned as set out above, is not contrary to the public interest, public health, public safety, public convenience or public welfare of the citizens of Lee County.

VI. PRESENTATION SUMMARY:

Pam Houck, Division of Zoning, presented the Staff Report for this request for a special permit in the RM-2 (Residential Multiple Family) district for consumption on premises and outdoor seating for property located at 5480 Estero Boulevard, on Fort Myers Beach. The property is on the corner of Estero Boulevard and Dakota Street and is a 90-foot x 265-foot lot developed with the Sand Bar Resort. The Applicant wants to add an outdoor bar and to establish a Group II restaurant. Using an aerial photograph, Mrs. Houck pointed out the location of the "chickee" (tiki) hut on the rear of the property, adjacent to the Gulf of Mexico.

Staff has recommended denial of the request because it is within 500 feet of existing residences.

The subject property is surrounded on three sides by residential uses, and the Gulf of Mexico is at the rear of the property. Staff's primary concern regards compatibility with the adjacent residences. Because of the location of the proposed chickee hut, Staff was concerned about nuisances and noise that could be created, along with additional traffic. Dakota Street is also a public access to the beach and generates additional traffic.

Staff has cited specific considerations they believe the request is contrary to. Mrs. Houck referenced page 3 of the Staff Report which cited Section 900.02.D. and noted that this referenced should be "900.02.E." Also, the three sections for consideration should be changed to "900.02.C.7.", "C.12.", and "C.14." The proposed request is

Inconsistent with the Lee County Comprehensive Plan (Lee Plan), specifically Policy 5.1.5, which deals with compatibility and the protection of adjacent residential uses. The request would not be compatible with the existing uses, and would not be in compliance with all general zoning provisions. As a subordinate use it has to be specifically for that motel and must be used by the motel and its guests. Staff is concerned that the motel, being at this location, will be used by the beach traffic and will act as an attractor to that traffic.

Steve Hartsell, Esquire, stated that Mr. and Mrs. Mikhailoff were the owners of the Sand Bar Resort Motel, Inc. The request is for a special permit for consumption on premises in conjunction with a Group II restaurant, which is a subordinate use to their motel. This would allow the sale of beer and wine only in conjunction with meals served at the restaurant, which is a subordinate use to the motel. Although the restaurant does not presently exist, it is a permitted use and is going to be constructed irrespective of whether beer and wine is served. Mr. Hartsell submitted a letter for the record which reflected the Applicant's presentation (Applicant's Exhibit 1). Jadwiga Mikhailoff, the Applicant and one of the owners, thanked Staff for their help through the zoning process and read her presentation into the record:

In support of my request for consumption on premises permit please find the following as truthful and honest arguments as to why this license should be granted to us:

We purchased the Sand Bar Resort on June 15, 1990, 3-1/2 years ago for over \$700,000. We bought this property knowing that the Lee County Zoning Ordinance allows a number of types of business activities as ancillary to the hotel business. One of these ancillary businesses is a restaurant with consumption on premises. Because we have less than 100 rooms we can have a 2-COP type liquor license (consumption of beer and wine only). This ordinance does not require the hotel to be located on commercially zoned property, only that it will be a hotel.

Sand Bar is a hotel situated on the property with its backyard facing the beach. The backyard is enclosed by a few feet high seawall and above the seawall we have a chicken, at which we plan to establish a small restaurant for our hotel guests. Most of our guests ask if we have a restaurant on premises and quite a few walk away because we do not have one - we are losing business which we desperately need.

The buildings are getting old and require a lot of maintenance and some renovations. With the currently generated income we are unable to do so. The additional income that we expect from this restaurant is not "to get rich quick", but is necessary for us to be able to sustain ourselves in this business. Since we bought the hotel I had kept a full time employment to help pay for the hotel bills. During the first year I worked in New Jersey and came to visit my husband only few times during that year. The next 18 months I was fortunate enough to obtain employment in Clearwater, which allowed me to go to the motel on weekends. It is only since August this year that I finally began to work in Ft. Myers. Throughout this time my husband, with some help from my mother and my sister, was performing all the chores in the hotel by himself.

We often talk about how we wish we never set eyes on this hotel, as it has created an enormous hardship on both of us, not only financially but through a great deal of stress caused by the limited living conditions since we occupy one of the street facing efficiencies in the hotel. We are tied to the motel 24 hours a day seven days a week, combating the neighborhood vandalism and at times fearing being physically hurt as has happened to us once.

We wish we could see and move out of the hotel. We are both educated; my husband has an accounting degree and I have a

Masters Degree in Electrical Engineering. We could have a much nicer life but we do not have any buyers. For most people this business is not worth the trouble.

We are still trying to turn this situation around. We are already tied to this place, we have put too much money and sweat into it and can, with extra effort and family's help, make a hotel a much prettier place on the outside and the inside. We can attract even better quality guests and bring our and neighbors property values up. We need the extra income from the restaurant to reinvest to renovate the buildings.

Sand Bar property is situated in the urban area designated as "Intensive Development." There are large and small hotels on both sides of us and across the street. Most of the homes in our neighborhood are not occupied by their owners, as they are rental income producing properties. Those few that are owner occupied have additional apartments for rent. So, even though the neighborhood is zoned RM-2, there is mostly a business activity here.

The Sandpiper Gulf Resort is located a half a block away has close to a 100 units. The Lahaina Inn, the Bahama Beach Club Condominiums, the Azure Tides Apartments, and the Tropical Inn, all have a large number of units as well. The prices of homes at this neighborhood vary from \$50,000 to mid \$100,000, except for those fronting the beach. I fail to see how a restaurant on the beach side can affect the values of properties as far away as Palmetto Street, which is almost a block away on the other side of Estero Boulevard, or that of the homes located at the constantly busy artery of Estero Boulevard.

Between the Lahaina Resort and the Outrigger Beach Resort there are mostly residential rental homes. A few months ago the Outrigger Beach Resort was granted a COP permit. We propose to provide only beer and wine with food. The Outrigger's chicken hut sells hard liquor and it is open only when the restaurant is closed. It is right on the beach. The Sand Bar's chicken hut is separated from the beach by a seawall. If the Outrigger received the permit so should we. The difference between the Outrigger and the Sand Bar lies in the difference of size of the business, i.e., the number of rooms available for rent. Does the ordinance law apply one way to a big business and in another way to the small family operated business?

Mr. Hartsell interjected and stated that it was important to note that the Lani Kai's beach access didn't appear to have an opaque vegetative buffer, as it was visible from the beach. It is visible from the beach access. Mrs. Mikhailoff further explained the pictures and stated that the beach access allowed about three or four cars to park there. She continued reading her presentation:

Somebody has put a fear into the neighboring property owners that the Sand Bar is going to become like the Lani Kai. That person could not be further from the truth. If we wanted the Sand Bar to have the reputation that the Lani Kai has we can do it without this restaurant. All we have to do is for our safety is to establish our home outside the motel and rent the rooms to young rowdy party loving people. That could be one way we can improve the income at Sand Bar. Every weekend there are young people offering us a lot of money for a room to rent to have a party. My insurance would pay for any damages to my property but what would be happening to those mostly owner unoccupied neighboring houses? We today could play a loud music legally until 10:00 p.m. or 11:00 p.m. to attract even more such people. We have not done so in the past and do not wish to do such things in the future. Our neighbors can testify to that.

Please do not misconstrue the above as threats, we merely want to point out that there are many hotels and motels that have

respectable, quiet, and law abiding restaurants, and it is such a restaurant that we want to establish at the Sand Bar Resort. We are law abiding, God loving, responsible hard working, high principle residents and business owners at Ft. Myers Beach. The restaurant will be a high quality, enjoyable place which will be handled in the quiet way. It will be dignifying and non-intrusive to our neighbors.

One important side benefit to establishing this restaurant is the reduction of traffic on Estero Boulevard. There will be that many fewer tourists on the road driving to other restaurants for their meals, or to just get a beer. Our customers can enjoy their vacation on the beach and not lose up to two hours in traffic to get to other restaurants.

Some people claim that they specifically bought a house in the residential area. However, when they purchased their houses, the Sand Bar Resort, as well as many of the current hotels and motels were in existence then. Anybody driving through Ft. Myers Beach passes a hotel or motel weekly rental signs on every block along Estero Blvd. No one can mistake Ft. Myers Beach for anything other than the resort area which offers tourist attractions, hotel accommodations, restaurants, gift shops, water sports, fishing, etc. Both our motel and its operations is a legitimate business.

The growth and well being of the tourist industry in Florida, which is a \$30 billion industry, entails an important chunk of money which contributes to police services, road improvements, sewer treatment plants, schools and all the other necessary activities. These tax dollars must be important since Lee County spends much money to attract the tourists to our area. It is money the area could use to make possible for people to rebuild some of the old dilapidated structures that diminish the value of all the properties at Ft. Myers Beach.

This is our business it is also our home, we plan to raise our children here. We are very concerned about the value and the appearance of the properties in Ft. Myers Beach. We too have our home and our investment to protect.

We realize that there are conditions which need to be placed on the approval of this permit. We have suggested some conditions which are summarized in a letter written by Steve Hartsell, my representative. We will agree to those or other reasonable conditions which the Hearing Examiner feels necessary.

We did not in the past, we do not plan in the future to disturb the privacy of our neighbors. Our guests consume alcohol on our property today without effects on the neighbors. There is nothing to suggest that this small restaurant, which would be of a great help to us and our tourist customers, would affect this neighborhood in a way suggested by some of its residents. The current ordinance allows us to establish a restaurant with consumption on premises. Other hotels were granted such permits, and we should be given the same treatment.

We urgently need to make improvements to the hotel and we need the restaurant to attract more customers. Your favorable decision will be greatly appreciated.

They are going to be able to proceed with establishing the restaurant in the same manner, and establish sales of beer and wine on the property as packaged goods. This is not something that they want to do, as they would very much like the convenience for their customers, and to be able to do it from the chickee hut to lower their costs.

The Hearing Examiner asked Staff if a restaurant could be placed on the subject property now, to which Mrs. Houck responded that the Applicant was entitled to a Group II restaurant in compliance with subordinate

uses as listed in Section 528 of the Zoning Ordinance, which sets forth the standards that must be followed. It limits it to a location where it isn't visible from a public access. The Applicant was only here for the consumption on premises in conjunction with outdoor seating. They could have consumption on the premises indoors. Retail sales were allowed in conjunction with a hotel/motel. If the Applicant had a retail area, however, it would have to be entirely within the hotel building.

Patrick White, Assistant County Attorney, stated that the subordinate uses for Group II type were supposed to be pedestrian-oriented, and were usually located in businesses, or for recreational uses for the convenience of walk-in customers. The list provided in Group II includes cafes, food stands, diners, sandwich bars, lunch counters, and cafeterias. In this case, an outdoor use would be on that list. Mr. Hartsell stated that, as indicated by his letter, Mrs. Mihailoff had explained their particular situation. The restaurant would be a Group II type facility located on the premises for the purpose of serving only customers.

They feel that it is important to compare this request to the recently approved special permit made by the Outrigger Beach Resort. The Outrigger Beach Resort is a more intense use and has 156 rooms compared to the 12 rooms of the Sand Bar. Even if the Outrigger Beach Resort were looking to serve its own guests, there would be 12 to 13 times the impact on the adjacent properties. The adjacent properties are zoned RM-2 as well as RS-1.

The Outrigger Beach Resort is located in the Urban Community land use district. The Sand Bar is located in an Intensive Development area (sic), which is the most intensive developed area the Lee Plan allows. The Intensive Development area is suited to accommodate the high density and intensity of uses. This request is neither for a high density, nor a high intensity use.

The Applicant would agree to a number of conditions. Mrs. Houck had worked very closely with and had been very helpful to Mrs. Mihailoff, who had prepared this application herself. Mr. Hartsell stated that she had handled everything up until a few days before the hearing when she decided to contact him for help with the hearing. For the most part she had done the entire application herself, unfortunately, she did not present any conditions to Mrs. Houck. Mr. Hartsell stated that his letter contained a number of conditions that Mrs. Mihailoff was willing to agree to.

The Applicant was willing to plant a salt-tolerant, native vegetative buffer along both property lines on the rear of her property. This would allow the chickee hut, from which the food would be served, to not be visible from the beach access. There was already a fence there which the Applicant was more than willing to extend. This would leave only the thatched roof of the chickee hut visible.

The second thing that the Applicant was willing to do was limit the hours of operation. The restaurant would be open for service Sunday through Thursday, 7:00 a.m. until 9:30 p.m., and on Friday and Saturday from 7:00 a.m. to 10:30 p.m.

There would be no outdoor entertainment or loud music allowed. They understood the neighbors' concerns, and this was not a restaurant for purposes of attracting beach traffic or anyone else.

Food and beverage service from the restaurant would be strictly limited to guests of the hotel. A sign designating this will be prominently displayed in the restaurant. Since the hotel is so small they feel that this is something that would be very easy to enforce due to the limited numbers of guests.

The service area will be limited to room service, the chickee huts, and the pool and recreation area located within the seawalled portion of the rear of the property. The area in which they would be serving from was

located in the seawalled area three or four feet above the rest of the beach. It was set apart from the rest of the beach by an abundance of rocks located by the seawall to protect it from erosion. Mr. Hartsell explained that this was not the kind of restaurant where people walking the beach could stroll up and get served; it just wouldn't happen.

There will also be no advertising of the restaurant, which is something that was not included in the letter. They will not advertise it as a restaurant that's open to the public. They are very much interested in maintaining the compatibility of their hotel with the neighbors and are aware of the neighbors' concerns that this not turn into a Lani Kai. This was not going to happen. All they want is the ability to serve beer and wine with a meal. Overall, the restaurant is not what is in question here, even consumption of alcohol on premises is not the question, as people are allowed to bring guests who bring their own alcohol with them. They can have drinks around the pool if they want to do that. They can also have drinks with their meals if they wish to.

The Mihailoffs can sell retail packaged goods from within the motel itself, and alcohol can be consumed on the premises presently, and is lawful. The only question is whether they are going to be able to have permission to have the convenience of serving a beer or glass of wine to the people with meals.

Mrs. Houck interjected and stated that the subject property was located in the Urban Community land use designation. The Staff Report that was first issued contained an incorrect page stating that it was located in the Intensive Development category. However, there was a correct page sent out indicating that it was located in the Urban Community category, as there was no Intensive Development, at all, on Fort Myers Beach.

The Hearing Examiner asked, if they could have a restaurant outside and consumption inside, what specifically the problem was in having a restaurant outside that sold beer and wine. Mrs. Houck responded that the restaurant was not the problem; the problem was the outdoor seating. The Hearing Examiner asked if they could have outdoor seating now, to which Mrs. Houck responded that they could have outdoor seating without alcohol. The Hearing Examiner asked what the difference was in having outdoor seating with or without alcohol, to which Mrs. Houck stated that (with alcohol) there tended to be more noise; it was an attractor. Historically, on the beach, this was a type of situation which attracts beach-goers, per se.

The Hearing Examiner asked Staff if they had any problems with the conditions that had been presented, to which Staff did not. Staff's only concern regarded the specific location of the outdoor seating adjacent to the seawall. In referring to the site plan, Mrs. Houck showed the location of the public beach access as well as the location of Dakota Street and where it ended (which was at the Applicant's property line). It was all beach access even though it had eroded and the Gulf went further up.

Staff's concern was with the location. Mrs. Houck had discussed, with the Applicant, the possibility of relocating it into an area they believed would be more buffered from the public, and it would also buffer it a little more from some of the residential areas. She pointed out the location of houses and stated that there were also residences across the street. Overall, location was Staff's biggest concern. Because of the chickee hut and the seawall, it was hard to buffer it from the beach side. If approved, and Mr. Hartsell's conditions were made part of the approval, Staff would like to see the fence extended all the way to the seawall on both sides. At a minimum, an "A" type buffer should be required. There should also be a provision for access up the steps to the property, which would also be fenced.

Mrs. Houck questioned the Applicant's Condition 5, and asked what the actual service area was and if it was the entire backyard, to which Mr. Hartsell stated that said it was.

Mr. Hartsell noted that there were two letters in support of the request. One was from Wanda Cook, who resided in the house located one house over, on the east side. The other letter was from Jeff Rice and Susan Leever, who lived directly across the street from the Sand Bar, on Estero Boulevard.

Mr. White stated that Policy 5.1.5 states that any development approval must contain guarantees that expanded buffer areas will be provided and maintained. Denial of the request, as recommended by Staff, was based upon the fact that no such guarantees were offered at any point in time prior to this hearing as evidence of the fact that they were not fully apprised of what those conditions might be, or any guarantees that might be offered. The issue regarding other uses and other locations on the beach was not relevant here. Mrs. Houck stated that she was very concerned because this regarded the immediate neighborhood, even though there were hotels and motels on both sides of Estero Boulevard.

The Sand Bar motel is a permitted use on property zoned RM-2. It was permitted as "existing only," which means it has the same rights as any permitted use. If the property were being developed today they could not build a motel there. Overall, it has a little different flavor than some of the other areas on the beach because it located in a truly residential area; that is why Staff has a strong concern about the outdoor seating area with the consumption on premises.

The Hearing Examiner asked Mrs. Houck if she was aware of any of these possible conditions, to which Mrs. Houck stated that she and Mr. Hartsell had discussed them late yesterday afternoon.

Mrs. Mihajloff stated that before she submitted the application she talked to Mike Pavese, Dan Adams, and a few other people in the Division of Zoning, who, according to their interpretation, said she should not have had problems obtaining this permit. They told her that the process was set out in such a way that a private person could do it. If there were some shortcomings, it was because they were financially strapped and wanted to minimize any expenses.

The two homes located to the north and south were both unoccupied, one was two-family house. There was an agreement made with the real estate office to rent them out. She spoke with the person who lives to the south of them who wrote a letter indicating that she had problems with alcohol. She basically said that she didn't think that this would disturb her or would diminish the value of her property. She hoped the request would be approved.

Jim Willis stated that he lived across the street, approximately 200 yards from the Sand Bar Resort. He strongly objected to the request. There was insufficient parking in the area already. They also rent jet skis and he didn't believe that alcohol and jet skis mix. Also, adjacent to the subject property, was a school bus stop.

Mr. Willis worked at the Sandpiper Gulf Resort as a night person from 10:00 p.m. until a.m. The Sandpiper has 63 units. He sees a lot of things that go on at night as a result of people drinking which includes vandalism, breaking into pop machines, etc. The Hearing Examiner asked if there was a consumption on premises permit at the Sandpiper, to which Mr. Willis responded no.

Bill Berdan stated that he lived on the next street, to the north of the Sand Bar Resort. The subject property was located in an area that was not included in the County's policy for intensive development. With regard to the RM-2 zoning, the County land use regulations prohibit the development of duplex housing in those areas. Palmetto Street contained lots that were zoned for duplex house; however, you can not get permits to build a duplex in that area. This was a change that was made which was explained to him by the Division of Zoning. Any intensification of use would be inconsistent with current County policies.

The Hearing Examiner asked Staff what uses could be placed in the RM-2 zoning district, to which Mrs. Houck explained that the issue that Mr.

Berdan was speaking to regarded density limitations placed there by the Urban Community land use category. It was an area that had a lot of small non-conforming lots which did not meet the density limitations for duplexes.

Ted Fitzsimons stated that, as Director, he was present to speak on the behalf of the Fort Myers Beach Civic Association. They believe that the fact that the Staff Report did not mention Lee Plan Policy 18.2.1, which contains a critical statement with regard to the Fort Myers Beach section, was quite significant. This policy states that: "within the Urban Community land use category the following restrictions to commercial development shall apply. Commercial development shall not expand or intrude into residential neighborhoods." That particular item has been in existence since the plan was put into effect in 1990. It has been reviewed by the BOCC several times in the past couple of years and has weathered all challenges. Expansion of commercial use in residential areas does not go on Fort Myers Beach.

Staff has classified the subject property as being located in the Intensive Development land use category, whereupon further inquiry, it was discovered that should have been Urban Community, which is correct. That might be the reason why Staff was unable to come up with the application of 18.2.1, since it related to the uses within the Urban Community category.

RM-2 zoning does not allow commercial operations. Any existing commercial should not be allowed to expand within the confines of 18.2.1. Section 528 of the Zoning Ordinance indicates that subordinate uses are allowed within non-conforming uses, which is a ridiculous and a deleterious allowance in this particular case. If you have a non-conforming use you could not rebuild. It is presumed that a motel is allowed within that zoning area. In this particular case a motel is not a recognized use within the RM-2 zoning district. Subordinate uses should also not be allowed. Under 18.2.1 there's no question, but expansion of any commercial operation in a residential area cannot be allowed. They know that the Lee Plan is the higher authority.

The present facilities do not conform to many DSO requirements for motels. There are no setbacks for the facilities on this property, but there are encroachments on both the north and south sides of the property. The surrounding area is residential.

The site plan submitted by the Applicant contains several errors. It shows the Coastal Construction Control Line (CCCL) established by the State of Florida, and was re-established on May 30, 1991. At the present time it's completely off the existing site and out in the middle of Estero Boulevard somewhere. Yet the site plan shows the CCCL as going right through the premises at the edge of the pool. Seaward of that the chickee hut and shuffleboards were built.

The Hearing Examiner asked Mr. Fitzsimons to stick to the facts regarding how this COP would affect him. Mr. Fitzsimons reiterated that the site plan submitted was in error. The site plan also indicated that a chickee hut was established which met the 110 mph wind speed tolerance as required by law. The Hearing Examiner again reminded Mr. Fitzsimons that he was getting off the subject. Mr. Fitzsimons stated that road access on the Staff Report is not constrained, but was constricted. Estero Boulevard is notoriously constricted and has been for years.

The setback of the existing premises caused a hazard to vehicles leaving the Dakota Street beach access. It is a problem which would be compounded by alcohol. According to the West District Sheriff's captain, alcohol is Ft. Myers Beach's greatest problem. Alcohol should never be sold where mechanized vehicles are rented out, such as jet skis.

Robert Blazina, also a resident, stated that he owned the property located at 5354, 5350, and 5335 Estero Boulevard, along with a vacant duplex. He also owned a portion of the advertised motel. There was no way that the issuance of a license for a restaurant, or to consume and sell alcoholic beverages on this property could be warranted by the

number of units occupied and used on this property. There was no way that the liquor license could benefit them if they were intending to serve only their clientele. There is direct beach access to this property from the beach and steps which would allow anyone walking the beach to enter and exit this property at any time.

He questioned the two letters in favor of the request, as these were from people he did not know and he didn't know whether they were residents or renters.

He himself had owned his properties for about 18 months, in which time he has observed and has been directly involved with the Sheriff's Department and many neighbors as a direct result of the consumption of alcohol and beverages in this area through the rental properties. The additional allowance of consumption of alcoholic beverages and sales of alcoholic beverages is going to attract beach-goers, traffic down the street. Overall, it is not compatible with the area.

The Outrigger Beach Resort is in no way comparable to the Sand Bar Resort, as it is much larger. Also, their chickee hut restaurant area is contained between the two outer perimeters of their property and their building ran on the outside, and all the noise is directed towards the beach. While they do not have a seawall and their facilities could be considered directly on the beach, they are approximately 100 yards from the water. During much of the time the sea is right up to the seawall at the Sand Bar Resort. The top of the seawall is public access. It is comparable with the area. He didn't believe that there was anyone who had direct contact, via day to day living, who would accept this type of facility in this location.

Garr Reynolds, another resident, stated that he and his wife purchased a home about 18 months before the new owners purchased the Sand Bar. There were few complaints then, and the only problem involved asking people not to park on the public access. The Sand Bar Resort was then sold to the present owners, who ran it well for about a year with no complaints or problems. Then, in February or March of the second year, the new owner began to operate a jet ski operation, which immediately created problems regarding public access, which they needed for this operation. Jet skis were parked, filled with gas, and engine adjustments were made in the public access and in the Gulf waters; as they still are made now. Tourists and local residents have literally been displaced on this intersection at the beach and the public access. A once peaceful and quiet beach area has been transformed into a much less desirable place. The residents have made many complaints to various County departments, but the motel won, as the jet ski business is still in operation.

A boat davit has also been installed on the Gulf seawall. This interfered with everyone who walked the beach. It is about four to ten feet wide.

The residents are pleased that the access is no longer completely used to get the machines in and out. They feel that their complete use of this access is unfair to the residents, as none of them are allowed to put in their boats, jet skis, etc., at this access.

The Hearing Examiner asked Mr. Reynolds if he had any problems with the alcohol consumption being requested, to which Mr. Reynolds stated that the new motel owners were now requesting permission to serve alcohol very near the beach access. There are presently no structures, only the chickee hut.

When he purchased his home about five years ago, both the owner and the Realtor told him that their Gulf view would never be disturbed because of the County, State, and Federal construction control lines. However, in late August/early September of this year, the present owner built a large chickee hut which has blocked their view of Sanibel Island. This is something he has not complained about because he wanted to be a good neighbor. When they began building an in-ground pool a few years ago he did not complain. This was not a particular complaint about the

swimming pool, but only to put the point across that the demands that are being made by the present owners have to be stopped. This needs to end now.

The owners of the Sand Bar should not be given further special treatment or exceptions. All these are problems which have been ignored by most of the neighbors, but they, as a neighborhood, won't ignore them any longer. The serving of alcohol and partying, loud music and entertainment is sure to follow. They do not believe that this request will help the motel, but it will harm the community.

The Sand Bar Resort has no facilities for this business expansion, as they are short of parking space, and presently make use of the amenities of the access parking. Except for the jet skis, they have a quiet community and beach area. They do not want confusion and crowding cast upon them any further. Their request is that the Sand Bar's request for this restaurant, bar, and any alcohol license be rejected. He also didn't believe that the subject property was 265 feet long. He believed that it was only 125 feet long; maximum 250 feet. Also, there were not 12 motel rooms, there were only ten. The owners were using two of the rooms; one for them, and one for the person who runs the jet ski rental business. Mr. Reynolds submitted photographs of the property for the record and described the photographs.

Johanna Campbell, also a resident, stated that she was against the expansion of the consumption on premises for the Sand Bar Resort. She questioned when they were going to say that enough liquor was being sold and consumed on the beach? Estero Boulevard had the unnecessary fame, recently given to it by the News-Press, as being the most dangerous intersection in the State of Florida because of the traffic fatalities related to alcohol.

Approval of this permit will turn this community, which is essentially a single-family residential area, into a business and commercial area. The Applicant was offering conditions to get their variance; however, these were conditions that they may honor now, but what happens five or ten years down the road when other people move in. Conditions do not work. He asked that the request be denied.

Mr. Blazina referenced the barrier or fencing that was suggested along with some of the conditions. The coastal setback runs directly down Estero Boulevard. To put up fencing along the property lines they need to go through the Florida Department of Environmental Protection (FDEP); however, FDEP will not allow solid fencing anywhere within the beach area. This was something he was sure of because of information received in his attempts to put up fencing on his property, which was nowhere near the water.

Mrs. Houck explained that there were restrictions because this property was seawalled. It would not be that much a problem if it went right down into the dune. Also, the proper meaning of CCCL was Coastal Construction Control Line; it was identified on the Applicant's site plan as the Coastal Construction Setback Line. This line was established in the 1970's and is no longer applicable; however, it still shows up on many surveys and site plans.

Regina Reynolds stated that she lived approximately 100 feet southeast of the Sand Bar Resort. She had not complained too much even when the jet ski operation commenced. The pictures entered by her husband were old and the property no longer looks like that, as there are no birds, people can't lay on the beach, except some times in the access. There's always about four or five gas cans sitting on the seawall.

She also has not complained about the chickee hut which blocks their view of Sanibel Island. She has not complained about the increased traffic overflowing with jet skis using the beach road access to get them in and out when they have problems. Also, when their guests sit out and drink their beer or grill out. However, she was concerned about the fact that there is a school bus stop on the corner which is used in the morning and afternoon.

At night there is a lot of traffic which consists of young people going in and out of there. Cars also run through their driveway with kids yelling and their radios blaring. Sometimes the police stop them because they are drunk on the beach. It was getting scary and evolving into a nuisance situation. Approval of the request will cause more young people to go in and out of this part of the beach, which will become their hide-out.

There are two convenience stores within two miles of each other. There is no wildlife anymore, as the birds are all gone; however, they do see a few seagulls. It's disturbing that the entire area is changing. A lot of people could not attend the hearing, because they had to work, all signed the submitted petition.

Frances Hodosh stated that she also lived on Fort Myers Beach and had also heard stories about how tough it was to try to make a good business at the beach. She questioned how twelve motel rooms could support a liquor license and a restaurant. Where did they expect this business to come from, if not to bring in a lot of outside traffic? The area is very small and she didn't know where any cars could park.

Dorothy Norris, owner of property located on Dakota Avenue, stated that she and her husband were daily swimmers, so they walk the beach access a lot. They also have had a problem with the jet skis, and had formed an group which went to Commissioner Judah about it.

She questioned if a restaurant had to have a place in which to serve food, and whether they had to sterilize dishes. She also wondered if there had to be restrooms and restrooms for the disabled, as these were things they did not have. Mrs. Houck stated that they would be required to meet all local Health Department and State requirements, as well as all County codes, including the handicap codes. Mrs. Norris asked if the Sand Bar has done it, to which Mrs. Houck said that there was not yet a restaurant there, but that they had the right to establish one. At that time they will be required to comply with all the codes stated. Mrs. Norris questioned whether their chickee hut was permitted, to which Mrs. Houck stated that it was and that she had reviewed the permits.

Mrs. Norris stated that she was against the request. The beach access portion used to be an area where up to 18 people could sun bathe at one time. However, it is no longer a beach access. Even the posts that have been placed there to keep vehicles from driving on the beach have been pulled out to allow the jet ski area to go in. She didn't see how 12 hotel rooms, which were not filled, could support a restaurant. If sold to someone else, this could cause a bad traffic situation.

David Holmes, also a resident, stated that he had concerns regarding conditions that might not be enforceable. He was not a direct neighbor to the subject property. His objection was one of principle, as there were rules about the intrusion of commercial interests into residential areas. He objected to the idea of further intrusion of commercial uses into a residential area.

He didn't know how the condition limiting the use of the outdoor consumption to guests could be economically feasible. Jet skis have been mentioned several times and, while not germane to the current application, the fact that they operate without the "benefit of clergy" means that code enforcement isn't very effective. Overall, he shared the thought that, in time that no matter what conditions are applied, it will be difficult to enforce these qualifications. For these reasons, he objected to the requested special permit.

Robert Keene, another a resident of the beach, stated that despite assurances from the owners that they will not serve alcohol to non-guests, along with the fact of the small number of guests that will likely use the facility, it didn't seem as though it would be a financial success. He didn't know if there was any way they could legally restrict public access to the bar once permission has been granted.

Rattach Larocca, a beach resident, stated that he believed that they had enough violations as it was now, and he didn't think they needed any more. He disagreed with a liquor license.

Mr. Hartsell stated that it was important to remember that they were talking about a small hotel, as many of the people have commented. He didn't believe that it was appropriate to speculate that the owners could not afford to have a restaurant and that they must want something more. This is not the case. It's difficult to fight or rebut speculations which have come forward with regard to, "how can they afford a restaurant here?" The fact of the matter is that's what they are requesting, and again, it's not the restaurant, but the ability to serve beer and wine at the restaurant. The request will have to go through the Health Department, and will have to meet all of those codes and requirements. It's an entirely different process. The question today was with regard to whether it is appropriate to approve the sale and consumption on premises of beer and wine with the restaurant, once it is approved.

The Mihaloffs cannot afford the kind of loud, rude, and obnoxious behavior that the neighbors are afraid of. They live on the premises themselves; it is their home. It was stated that Mr. Mihaloff has maintained good security 24 hours a day. They are not going to allow that kind of behavior in their home.

Another point to remember is that when you have only ten or 12 rooms, if two or three people are offended by the behavior of a couple of the guests, you lose 25 percent of your business. Again, they simply can't afford to allow the kind of behavior that the neighbors are concerned about. Consequently, the speculation that this is going to be some wild and obnoxious place just isn't true; it isn't that kind of place now. There is currently alcohol being consumed legally on the premises, and the ability to serve beer and wine with meals is not going to change that.

This is not a non-conforming use, as the existing motel is a permitted use in the RM-2 district. A restaurant, subordinate to the hotel, is a permitted use in this zoning district. Outdoor seating with the restaurant is also permissible in this district and is part of the existing restaurant. These are all uses that are germane and presently part of the existing motel. This is not the expansion of a commercial use into an existing residential neighborhood.

Policy 18.2.1 does not apply in this case. This is not an expansion of commercial uses into a residential neighborhood. The photographs introduced by Mrs. Mihaloff were taken in December 1993. They urge the Hearing Examiner to base his considerations on the request they are here for today, which is the ability to serve the guests beer and wine with their meals. If the restaurant can't be permitted for some reason or another then this special permit will be of no use.

Most of the arguments heard today seem to be to punish the Mihaloffs for noise or concerns associated with the jet ski operation which is lawful. However, that's not appropriate for consideration in this issue, and is something they urge not be considered for the approval of this special permit. The Mihaloffs are more than willing to comply with whatever conditions the Hearing Examiner sees fit.

The Hearing Examiner asked Staff to address Policy 18.2.1. Mrs. Houck responded that she had reviewed this request as being in the Urban Community land use category and had reviewed it in relation to this particular policy. This policy is not applicable in this case because the request involves an established commercial entity that is not expanding in area.

Mr. White stated that the County Attorney's Office had no problems with many of the things mentioned by Mr. Hartsell. The analysis here starts in the Zoning Ordinance, Section 528.C.3., which discusses subordinate commercial uses. It states that they "shall be permitted subject to the following requirements: public access to the commercial uses shall not

be evident from any abutting street." In the Hearing Examiner's consideration, the County Attorney's Office asks that the meaning provided for "street," be any public way which would include the public beach and the access thereto. As indicated by Mr. Hartsell, you shouldn't allow form to control over substance, as the beach would also fit the intent.

Sections 900.02.E.4.a. and b. state that the Hearing Examiner shall grant the special permit unless he finds that "granting the special permit is contrary to the public interest and the public health, safety, comfort, convenience, and welfare of the citizens of Lee County," or that the request is in conflict with Section 900.02.E.3. The Staff Report clearly indicates that it is in conflict with 900.02.E.3. The testimony received today from the public also affords the opportunity that it is contrary to the public interest, etc.

If the Hearing Examiner feels that he has received sufficient information today to render a decision in this case, that he do so with consideration with regard to Section 900.02.E.4.b., which states that the Hearing Examiner has the authority to attach such conditions and requirements to any approval of a request for a special permit as deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public, and that said conditions or requirements shall be reasonably related to the action requested.

However, there is sufficient information at this point in the process to render a fully informed decision. The County Attorney's Office would also request that strong consideration be given to Section 900.02.F., "Notices of Intent to Deny Based on Insufficient Information."

It was clear that there had been an offer of conditions in this case which Staff had not had a full opportunity to review. However, it might still be their conclusion that the special permit should be denied.

Mr. Hartsell referenced Mr. White's comments concerning the beach being the same as the street and stated that he disagreed strongly with this. He also requested that the Hearing Examiner take into consideration some of the concerns that the neighbors have expressed with regard to buffering. The Mihalioffs were more than happy to buffer to the extent required by code. The beach access is not the kind of place where there is a true concern as to whether or not the restaurant could be seen. The ability to see the top of a chickee hut doesn't make the restaurant visible from the beach access. The Reynolds have stated that things that are placed next to their property have an effect on other beach neighbors. They need to be careful not to go beyond what the code intended.

Mr. White stated that the recommendation he made with regard to insufficient information was strictly limited to the conditions that had been offered.

VII. PUBLIC PARTICIPATION: The following persons appeared at the hearing or became "parties of record" in this case by submitting written materials:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Steve HARTSELL, c/o Pavese, Garner, Haverfield, Dalton, Harrison & Jensen, P.O. Drawer 1507, Ft. Myers, FL 33902-1507

ADDITIONAL COUNTY STAFF:

1. Patrick WHITE, Assistant County Attorney, Lee County, P.O. Box 398, Ft. Myers, FL 33902-0398

FOR:

1. Jeff RICE and Susan LEEVER, 5421 Estero Blvd., Ft. Myers Beach, FL 33931
Letter 12/21/93: I have known Osama and his wife Heidi Mihalioff for the past three years. During this period they have operated the Sand Bar motel, and have taken a business which was an eyesore on the beach,

put a lot of hard work and money to bring it to the standards of Lee County. I can remember the very first year very vividly, peak season, motel is full, and the roof has been leaking ruins the rooms and kills his business for the season. Most people would have packed up and left, but he has stayed with it and built the motel into a very nice operation.

The standards that Sam has put into the operation has made this family run business popular with the traveling families. His 24 hour security and his on scene management make security the top priority of this business.

I personally feel as a local property owner 901 San Carlos Drive and the property across the street at 5421 Estero will in no way put a strain on our property's, or run the neighborhood down. In fact, it will help us in these uncertain times.

By giving the Sand Bar a license to sell will only keep people off the streets and help in keeping people, here on our beaches of Ft. Myers. Sam intends this to be only a chickee hut type operation with no night club or long hours. This is a very low profile type of operation which is anticipated. No parties or loud music check the records.

I ask you why not, taxes, license fees, more money for the County and State. It is our number one business - tourism. Give them what it takes to bring them back year after year. The Sand Bar needs this asset to help its business. It's no different than the Outrigger and other hotels/motels on the beach that have small chickee hut license operations.

Please think of the positive side, I know this will not hurt the neighborhood, nor will it degrade people already carrying their refreshments to the beach. Why not have a place where you can get it without carrying coolers? Sam runs a neat and clean operation, and I'm for giving him this opportunity.

2. Wanda F. COOK, 13167 Brookshire Lake Blvd., Ft. Myers, FL 33921
Letter 12/23/93: I own property at 5380 Estero on Ft. Myers Beach. We are only one home away from the Sand Bar. I find their new endeavor exciting for the visitors as well as residents. It will add another eating establishment at a convenient location.

AGAINST:

1. T. E. & Bea DAVIS, 355 Seminole Way, Ft. Myers Bch., FL 33931
Letter 12/10/93: I am a resident of Ft. Myers Beach and live in the neighborhood where the Sand Bar Resort is located. I want you to know that I am against any permits allowing this motel to sell beer and wine at this location. The parking is also very limited in this area. Further, we have a quiet community. This type of new business would bring "party time" every night and especially on weekends with music, loud music, and louder music, etc. The motel doesn't need it, and we don't need it.

This expansion in their business would require an additional structure on the gulf front which is approximately 200 feet beyond the present build back line. There are presently no facilities with water pipes for sinks, electric lines for freezers and refrigerators, sewage pipes for waste water, and the list goes on. Besides breaking all the rules of the EPA and other ordinances, there is not enough space. Also, all of the neighbors would be most unhappy. I request that you firmly deny this permit.

2. John & Mary Lou SHOCK, 5551 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

Letter 12/9/93: I say no because this corner is a school bus pick up and return for two schools. Our kids do not need this beer and wine license permit.

3. Paula RICHARDS, 50 Dakota Ave., Ft. Myers Beh., FL 33931
Letter: Identical to #1.

Letter 12/12/93: I am the next door neighbor of Mr. Mihailoff (owner of the Sand Bar Resort). I am against any permits allowing him to sell or serve beer and wine.

I am recovering from an alcohol related auto accident that occurred in Michigan. My head was split open, leg and arms crushed, back, ribs, hands broken, chest cracked, lungs collapsed, coma, cardiac arrest and four major surgeries. I was hit by an 18-year-old girl with a blood alcohol level of .20. The girl was charged with manslaughter and the owners of the location that served her. The county and state were also sued. The passenger in her car was killed.

By permitting Mr. Mihailoff to serve alcohol you are increasing the possibility of this situation happening on Ft. Myers Beach. Last year he allowed young adults and teen-agers to have large parties on the premises. Alcohol was always available. Mr. Mihailoff has continued to violate many beach zoning codes. The many people that used the public access have gone elsewhere. Consequently the beach has lost revenue and has received a poor reputation. I request that you deny this permit.

4. Ethel BENNER, 10 Avenida Carita, Ft. Myers Beh., FL 33931
Letter: Identical to #1.

Submitted PETITION with 17 signatures.

5. Mark B. LEWIS, 219 Dakota Ave., Ft. Myers Beh., FL 33931
Letter: Identical to #1

Note/Mr. Lewis: If you keep changing the character of our little community then you'll be eliminating all the things that we moved here to enjoy 36 years ago.

Note/Mrs. Lewis: It seems there is a goal to bring the Holiday Inn and the Lani Kai closer together and completely eliminate any year round (tax paying) families from our area. We have a 9 month old daughter and are very concerned. Thank you.

6. Phyllis N. FISHER, 7 Avenida Carita, Ft. Myers Beh., FL 33931
Letter: Identical to #1.

7. Richard & Lenore GROTS, 250 Egret St., Ft. Myers Beh., FL 33931
Letter: Identical to #1.

8. Larry WOODRIDGE, 189 Dakota Ave., Ft. Myers Beh., FL 33931
Letter: Identical to #1.

9. Dorothy H. NORRIS, Phyllis MARTEN, and James & Dorothy SCHUCHARDT, 210 Dakota Ave., Ft. Myers Beh., FL 33931
Letter: Identical to #1.

Letter/Ms. Norris: Enclosed is a copy of an article from the Naples Daily News which tells it like it is." The Sand Bar Resort has constantly, flagrantly ignored zoning victims of Lee County. They build without permits, they operate jet skis off beach access for their profit, now they want food and drink, outside seating, loud music in and around a chickee they built without a permit over a weekend. The parking and health regulations have all been ignored. I personally know of seven couples who yearly rent in the area for five months who eat out, attend plays and concerts, who go on cruises in local boats, who are not coming to Fort Myers Beach because of Sand Bar practically chasing them off of Dakota Street easement with their "Lani Kai like" activities.

Four of us in this household would attend the hearing on December 23, 1993 to protect, but will be out of town. Sincere protests from Dorothy H. Norris, Dorothy Schuchardt, James Schuchardt and Phyllis Marten.

Comment Card/Dorothy NORRIS: No more commercial expansion in residential zone. Sand Bar Motel has repeatedly violated land use laws.

Testimony/Dorothy NORRIS: See Section VI. Presentation Summary.

Comment Card/James SCHUCHARDT: No commercial expansion in residential zone.

10. Sandra O'BRIEN, 152 Toke St., Timmins, Ontario, P4N 6V1
Letter 12/6/93: The subject property, 5480 Estero Boulevard, is located in a very residential section. Being the owner of five single family residences within half a block of this property, I am very concerned about any permits which will change the character of the beach. I do not want the Sand Bar to have a permit granted as per this request as I feel it will detract from the residential character and thus lower my property values.

11. Jane DRAPER, 5230 Estero Blvd., Ft. Myers Bch., FL 33931
Letter 11/30/93: Please accept my input on the request by the Sand Bar Resort for a liquor license and beach side bar facility.

I must voice my opposition to this matter as a resident who would be greatly impacted by this situation. I understand and respect a property owners desire to control the complexion of his property but surely the impact on surrounding property must be considered.

This is a residential area. Our Island already teams with drinking establishments and there simply is no need for yet another one. I bought my home eleven years ago. I specifically chose a residential area as I live here. As a member of the majority of the tax base on Estero Island, the residents, I implore you to reject the beach bar request.

We have been plagued by poor handling of ski jet rentals by this establishment. They have displayed little regard for the safety and well being of the family oriented tourists this portion of the beach enjoys. Surely a bunch of drunk jet ski operators would do nothing to enhance this area.

Please do the right thing to preserve the integrity for the number one economy on Ft. Myers Beach. Safe, quiet family beaches. Thank you for your consideration.

12. Bill & Betsy BURDETTE, 5370 Palmetto St., Ft. Myers Bch, FL 33931
Letter 11/30/93: With regard to Sand Bar Resort, Inc.'s request to establish outdoor food and beverage operations in our residential neighborhood, we need sound answers to these important questions:

a. Can the County assure area residents and the general public that the outdoor food and beverage operations will never be enlarged or expanded in scope?

b. Can you assure us that approval will not establish a precedent for other rental operations in the neighborhood to open outdoor restaurant/bar operation?

c. Is this proposed expansion of intensive commercial operations consistent with the County's intent to consolidate such businesses in established commercial nodes?

d. With beach traffic and parking already major causes of concern, will the new business provide the highway, traffic and sidewalk improvements needed to assure neighborhood residents of safe access to the beach?

e. Will the construction and on-going maintenance of these traffic facilities/improvements be fully paid for by the Sand Bar Resort owners?

f. Can you assure us that traffic and parking caused by the new business will not impose on the narrow public beach access adjacent to the Sand Bar Resort?

g. Can the County guarantee that noise, cooking odors and garbage will not be a nuisance or negatively affect our enjoyment of our homes and the public beach?

h. Will an outdoor bar/restaurant have a positive affect on residential property values in the immediate area?

i. If neighboring property values decline, will the Sand Bar Resort be responsible for the loss of County tax revenues?

j. Will the new business be a good neighbor? Are the Sand Bar Resort owners the same people who have repeatedly been reported/cited/fined for violating jet ski regulations, creating public noise nuisance, obstructing public beach access with commercial jet ski rental operations?

k. This mid-island neighborhood has long been a desirable area for residents, retirees, and visitors seeking peaceful enjoyment of the beach. Will the proposed new business enhance this appeal of the area?

I have lived or owned a home in this very neighborhood since 1968. I've witnessed the expansion of restaurant/bar operations in other beach neighborhoods and I've seen the resulting increase in crime and decline in property conditions and values. I strongly urge you to take our concerns seriously and to recommend denial of Jadwiga Mihaloff's request.

Testimony/Bill Berdan: See Section VI. Presentation Summary.

13. Jessie M. CARTWRIGHT, 5481 Estero Blvd., Ft. Myers Bch., FL 33931
Letter 12/2/93: I, Jessie M. Cartwright, live at 5481 Estero Blvd., across from the Sand Bar. My telephone number is (813) 463-2250 or (816) 942-9456. I do not have any objections to the present practice of tables and chairs with food and drink consumed in the backyard but feel that serving liquor and food to the public will create parking problems as there are no spaces available except for their tenants. This is a beach access with neighbor people walking back and forth. I fear that people will be parking along my property because of parking shortage. Noise could be a problem if music is broadcast or loudly played, particularly at night. This has been a family oriented area and I would not like to see drop-in traffic and congestion in our neighborhood.

14. Betsy ABRAMS and Virginia N. BROWN, 240 Dakota Ave., Ft. Myers Bch., FL 33931
Letter/Ms. Abrams: I disapprove of beer/wine license for the Sand Bar Resort on Ft. Myers Beach at Estero Boulevard and Dakota Avenue access. Parking is very limited there. The noise of outside consumption of food and drink and music we do not need in a primarily residential area. Please reject the request.

Letter/Ms. Brown: I heartily disapprove of beer/wine license for the Sand Bar Resort on Ft. Myers Beach at Estero Boulevard and Dakota Avenue access. The chikkee in which they hope to serve liquor and food was built on a weekend without a permit to begin with. Please reject the request.

15. Harvey B. & Betty J. GOETSCH, 5394 Palmetto St. S.W., Ft. Myers Bch., FL 33931
Letter 12/9/93: As permanent residents in close proximity to the subject property, Sand Bar Resort, we feel strongly that the request submitted by Jadwiga R. Mihaloff, to be allowed to have public consumption in an outdoor setting on the property mentioned above, would be detrimental to our neighborhood. We have observed the noise, the traffic and the type of consumers who frequent such places northward on our island, and would much prefer to keep our neighborhood as it is.

We further believe that if Estero Island is allowed to open many more restaurants and/or establishments where strong liquor and loud music is allowed, that the island will eventually deteriorate into a "honky tonk" strip. This in turn would result in the loss of many permanent residents since most of us would not want our children or grandchildren in or around such places. This beautiful island would then be mainly rental units and entertainment businesses. We sincerely hope this does not occur and strongly object to the granting of this permit request.

Comment Card/Mr. GOETSCH: Concern for changing the atmosphere of the local community from a quiet peaceful neighborhood and the precedent it sets.

16. Jennie G. ZARRELLI, 5361 Palmetto St., Ft. Myers Bch., FL 33931
Letter 12/11/93: As a 12-1/2 year resident and taxpayer of Ft. Myers Beach, I strongly oppose the request by the Sand Bar Resort for outdoor consumption of alcoholic beverages. Our island is advertised as a family island, but if allowed to sell alcoholic beverages wherever one chooses it will simply become skid-row. I have grandchildren visit throughout the year and they spend their entire day at the access adjacent to the Sand Bar. I do not want them or myself subjected to alcoholic drunks.

Submitted PETITION with 27 signatures.

17. Douglas & Margaret STONE, 5502 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

18. James L. & Janie WILLIS, 5525 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

Comment Card/James WILLIS: Alcohol and jet skis don't mix. School bus stop adjacent to property. We are a residential area and don't need undesirables partying brings.

Testimony/Jim Willis: See Section VI. Presentation Summary.

19. Mr. & Mrs. CRANE, 727 W. Weymouth Rd., Vineland, NJ 08360
20. Sam & Fay TODARO, 5301 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

21. Raymond H. & Barbara DESROSIERS, 5471 Oak Ridge Ave., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

Submitted PETITION with 24 signatures.

22. Garr & Regina REYNOLDS, 5500 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: Identical to #1.

Testimony: See Section VI. Presentation Summary.

Comment Card/Garr REYNOLDS: As a next door neighbor, I am against any further expansion and establishing of new businesses at the Sand Bar motel.

Comment Card/Regina REYNOLDS: I live southeast of the Sand Bar Motel full time. I do not want to see more traffic turning in and out of the beach access day and night. Many cars park and sit all night long already yelling, noise, etc. Because of jet ski's at the Sand Bar, we already have lost our birds and serenity of beach viewing. I do not want our part of the beach to become a stopping place for undesirable and kids.

23. Joseph & Frances HODOSH, 21710 Madera Rd., Ft. Myers Bch., FL 33931
Letter 12/17/93: This is regarding Case 93-12-09-SP-02. We strongly urge you not to grant a COP permit to the Sand Bar Resort. Granting this would further deteriorate the quality of life for the residents and visitors of Fort Myers Beach and make it a much less desirable place for tourists. The combination of crowded roads and more drinking would further increase the accident rate on the beach. Property values will decline bringing less revenue to the County.

Comment Card/Mrs. Hodosh: This is a residential neighborhood. In view of the accident rate on Estero Boulevard due to drinking, it would be unconscionable to allow the licensing of more sites for liquor.

24. Harry N. & Jean S. GOTTLIEB, 50 Aberdeen, Ft. Myers Bch., FL 33931
Letter 12/16/93: As a resident and property owner I must take exception to the persistent violations that the Sand Bar property displays. First it was a swimming pool; a flagrant flouting of zoning, then it was overcrowding on that lot. A motel? I remember when it was a little one-family place that sold newspapers and milk. I've owned the same house here on Ft. Myers Beach since 1955.

Exceptions to zoning and the law should not become the rule here. My husband and I respectfully urge you to consider what the character of this residential area was, is, and should continue to be; a quiet place for families not another poor excuse for the fast and inconsiderate and illegal buck.

The Outrigger managed to slip a bar in on the beach. That is more than enough! Please consider the sensibilities of those of us who live here day in and day out. Please consider what the regulations are. They're there for the benefit of all of us residents and visitors and they are designed to make and keep the beach the charming and lovely place it has always been. Further, this area has RM-2 zoning.

25. Roy H. & Edith B. DAVIDSON, 5370 Estero Blvd. #17, Ft. Myers Bch., FL 33931
Letter 12/13/93: We are property owners of Ft. Myers Beach and live about 300 feet from where the Sand Bar Resort is located. We want you to know that we are against any permits allowing this motel to sell beer and wine at this location. They have very little parking for the motel. They have a public access next to them which has parking for beach recreation, not for their beer customers.

This has been a quiet family community for many years and we hope it will be kept that way. It would also mean more beer cups and cans on our beach like down south on the beach of the Outrigger Motel. There is not enough space also, all of the neighbors would be most unhappy if they (Sand Bar Resort) change the present business.

26. Charles & Bonnie MYERS, 5315 Avenida Pescadora, Ft. Myers Bch., FL 33931
Letter: Identical to #1.

27. Mr. & Mrs. Joseph LALLI, 209 Dakota Ave., Ft. Myers Bch., FL 33931
Letter 12/17/93: We are sorry that we will not be able to voice our strong opposition to the above issue in person, but one day before Christmas eve makes it very difficult. We have lived in this neighborhood for many years and have watched this property deteriorate and various owners abuse it and violate many ordinances over the years.

Some historic examples:

a. After a storm that took out many seawalls, they moved their seawall out toward the beach when they rebuilt. To this day, there are still dangerous reinforcing rods projecting into public space.

b. Parked guest vehicles on public property.

c. Placed their dumpster on public property at access entrance.

Some current examples:

- a. Use public right-of-way to beach to dump landscape debris.
- b. Built a ramp (remnants still exist) to tow their commercial jet skis onto the beach.
- c. Fill and stow gas cans on the beach.
- d. Park jet skis on the beach and block or obstruct pedestrian movement along the beach.
- e. Put commercial signs on the beach.

To sum up, this property has a history of over-extending its rights and privileges and as a result has degraded the quality of life we all come here for. We are strongly opposed to granting them the right to consume alcoholic beverages on the premises not only because of past and current violations, but most importantly because it's the last thing we need in a primarily residential neighborhood. Something such as what is being sought can change the whole character of a neighborhood and it's our feeling that the quiet, small-scale, residential feel must be preserved wherever still possible on the island. Furthermore, the County needs to look into the issue of allowing the re-fueling of commercial jet skis on our beaches and erecting temporary signage.

28. Fabian A. & Bernadene D. ELLIS, 5520 Estero Blvd., Ft. Myers Bch., FL 33931
Letter/Mrs. Ellis: Identical to #1.

Letter/Mr. Ellis: Fort Myers Beach tourists and Lee County residents are well aware of where the action is on Estero Island. It's referred to as "the Lani Kai end of the beach" or the "Times Square area." It's a place to go for fun, alcohol, music, etc. Perhaps this is as it should be, an area for visitors and residents to enjoy and leave behind when they've had enough. However, the many complaints to the Sheriff Department from the residents in that area objecting to the noise and loud music are a matter of record. In the past 18 years I have had many conversations with tourists about the peace and quiet they enjoy on this part of the beach and many have said they would never stay near the noise.

If this request is granted, all of the motels made very clear just how fast and far bad news can travel from South Florida. Please don't contribute to the possibility of Ft. Myers Beach being perceived as "seven miles of watering holes" with loudmouth beachcombers wandering from one to the next. The possibility of a swimmer being hit by a drunk expert-encing his or her first ride on a rented jet ski is real. Please don't allow it to happen. We live less than 150 feet from the Applicant.

29. Audrey WALKER, 323 Aquetong Rd., New Hope, PA 18938
Letter: Identical to #1.

30. PETITION submitted with 67 names: We, the undersigned residents of Estero Island, object to the permitting of Consumption on Premises or outdoor seating in the RM-2 district by the Sand Bar Resort, Inc.

31. Teresina & Rattach LAROCCA, 5511 Estero Blvd., Ft. Myers Bch., FL 33931
Letters 12/22/93: I am a resident of Ft. Myers Beach and live in the neighborhood where the Sand Bar Motel is located. I want you to know that I am against any permits allowing this motel to sell beer and wine at this location. The parking is also very limited in this area. Further, we have a quiet community. This type of new business would bring "party time" every night, especially on weekends, with music, loud music, and louder music, etc. The motel doesn't need it, and we don't need it.

This expansion in their business would require an additional building on the gulf front which is approximately 200 feet beyond the present

"build-back-line." There are presently no facilities with water pipes for sinks, etc., electric lines for freezers and refrigerators, etc., sewage pipes for wastewater, etc., and the list goes on. Besides breaking all the rules of the EPA, there is not enough space. Also, all of the neighbors are going to be very unhappy. I request that you firmly deny this permit.

Testimony/Rattach Larocca: See Section VI. Presentation Summary.

32. Donna KANA, 5511 Estero Blvd., Ft. Myers Bch., FL 33931
Letter 12/22/93: I live in the neighborhood area on Ft. Myers Beach during much of the winter months where the Sand Bar Motel is located. We like visiting this area and would hate to see this small motel sell beer and wine so close to the beach, especially so near the beach access where many of us spend time relaxing in our lounge chairs and visiting with friends. I can tell you that I can not find anyway that this kind of business will benefit the community. It will really mess up the quietness of the beach in this area! I hope that you will soundly reject the request for this consumption license.

33. E. F. "Ted" FITZSIMONS, Director, P. O. Box 2356, Ft. Myers Bch., FL 33932 (280 Seminole, Ft. Myers Bch., FL 33931)
Letter 12/3/93: The Ft. Myers Beach Civic Association is a resident's organization dedicated to the preservation of the quality of life in the Ft. Myers Beach community. Our Board of Directors recently became aware of the above referenced application and has unanimously voted to oppose this permit. The request is in direct violation of Policy 18.2.1 of the Lee County Comprehensive Plan. The zoning is residential and the Applicant wants to expand its commercial operations; operations which are only allowed because the premises were grandfathered into the present zoning.

We understand that the residents in the adjacent area are trying to organize themselves against the request but they need more time. Also, many of them will be away for the holidays and will not be able to make the hearing on December 23rd. We, therefore, are asking you to continue the case to the second week of January so that the best interest of all concerned can be accommodated. We appreciate your prompt attention to this matter of grave concern to our community and await your response.

Testimony: See Section VI. Presentation Summary.

34. Sue A. EVANSON, Mgr., Bahama Beach Club, 5370 Estero Blvd., Ft. Myers Bch., FL 33931
Letter: As manager of the Bahama Beach Club Condos we would like to go on record as disapproving of the Sand Bar Motel acquiring a license for the sale of beer and wine. We are located two doors north of the Sand Bar, and take pride at our south end being the quiet end of the island. Our customers during peak season, are all retired, monthly stays, and look forward to a happy peaceful stay. This approval off the beer and wine license would change the atmosphere and promote and draw loud and rowdy behavior.

35. Robert A. BLAZINA, 5352 Estero Blvd., Ft. Myers Beach, FL 33931
Testimony: See Section VI. Presentation Summary.

36. Johanna CAMPBELL, 21537 Madera Rd., Ft. Myers Beach, FL 33931
Comment Card: No further expansion of a commercial activity in a residential area. This motel was grandfathered in and can not expand unless it meets current codes.

Testimony: See Section VI. Presentation Summary.

37. Robert KEENE, 274 Curlew St., Ft. Myers Beach, FL 33931-4408
Comment Card: To grant variance now in an essentially residential area would be a gross violation of zoning regulations.

Testimony: See Section VI. Presentation Summary.

38. David HOLMES, 5650 Williams Dr., Ft. Myers Beach, FL 33931
Comment Card: Estero Island does not need another place selling alcohol in these violent times - outdoor drinking by itself increases noise in a residential area to an undesirable offensive degree, and might be accompanied by outside entertainment and particularly concerned about the violation of land use laws which specifically prohibit further commercial intrusion into residential areas.

Testimony: See Section VI. Presentation Summary.

39. Walter EISSLER, 5386 Palmetto St., Ft. Myers Beach, FL 33931
Comment Card: It is important to us to prevent this type of expansion.

40. FT. MYERS BEACH CIVIC ASSOCIATION, P. O. Box 2356, Ft. Myers Beach, FL 33932
Comment Card: This 409 member organization opposes this request.

VIII. LEGAL DESCRIPTION:

Lots 1, 2, 41 and 42, Block 6, Unit 2, GULF HEIGHTS SUBDIVISION, as recorded in Plat Book 6, Page 39, of the Public Records of Lee County, Florida, lying in Section 33, Township 46 South, Range 24 East, Lee County, Florida.

IX. APPEALS:

This Decision becomes final on the date rendered. A Hearing Examiner Decision may be appealed to the Circuit Court in Lee County. Appeals must be filed within thirty (30) days of the date the Hearing Examiner Decision is rendered.

X. COPIES OF TESTIMONY AND TRANSCRIPTS:

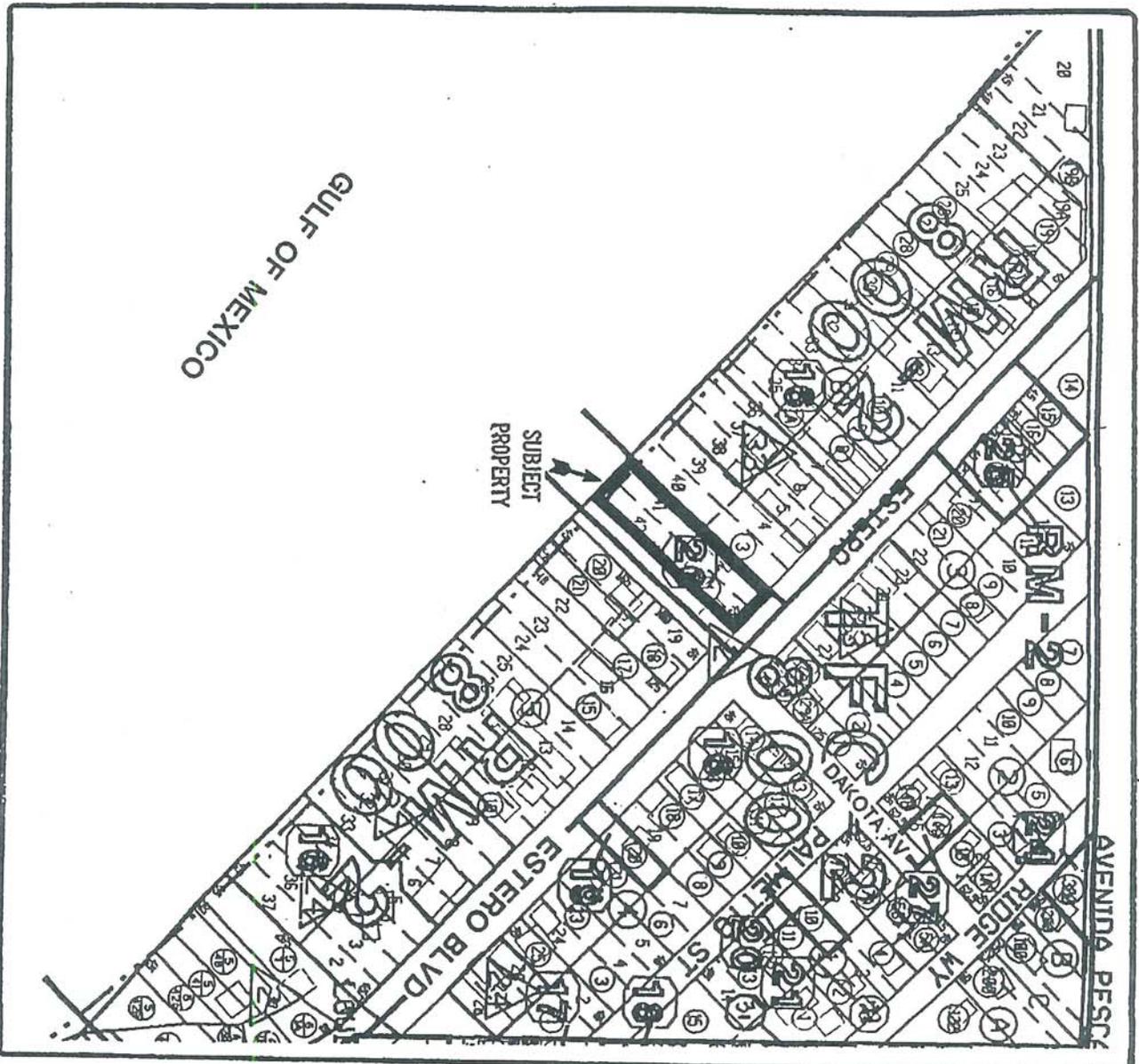
A. A complete verbatim transcript of the testimony presented at the hearing can be purchased from the Official Court Reporter, 20th Judicial Circuit, Lee County Justice Center, Fort Myers, Florida. The original documents and original file in connection with this matter are located at the Lee County Department of Community Development, 1831 Hendry Street, Fort Myers, Florida.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

This decision is rendered this 13th day of January, 1994. Copies of this decision will be delivered to the offices of the Lee County Board of County Commissioners.


SAVATORE TERRITO
LEE COUNTY HEARING EXAMINER
2269 Bay Street
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 813/338-3190

Adjacent
Zoning



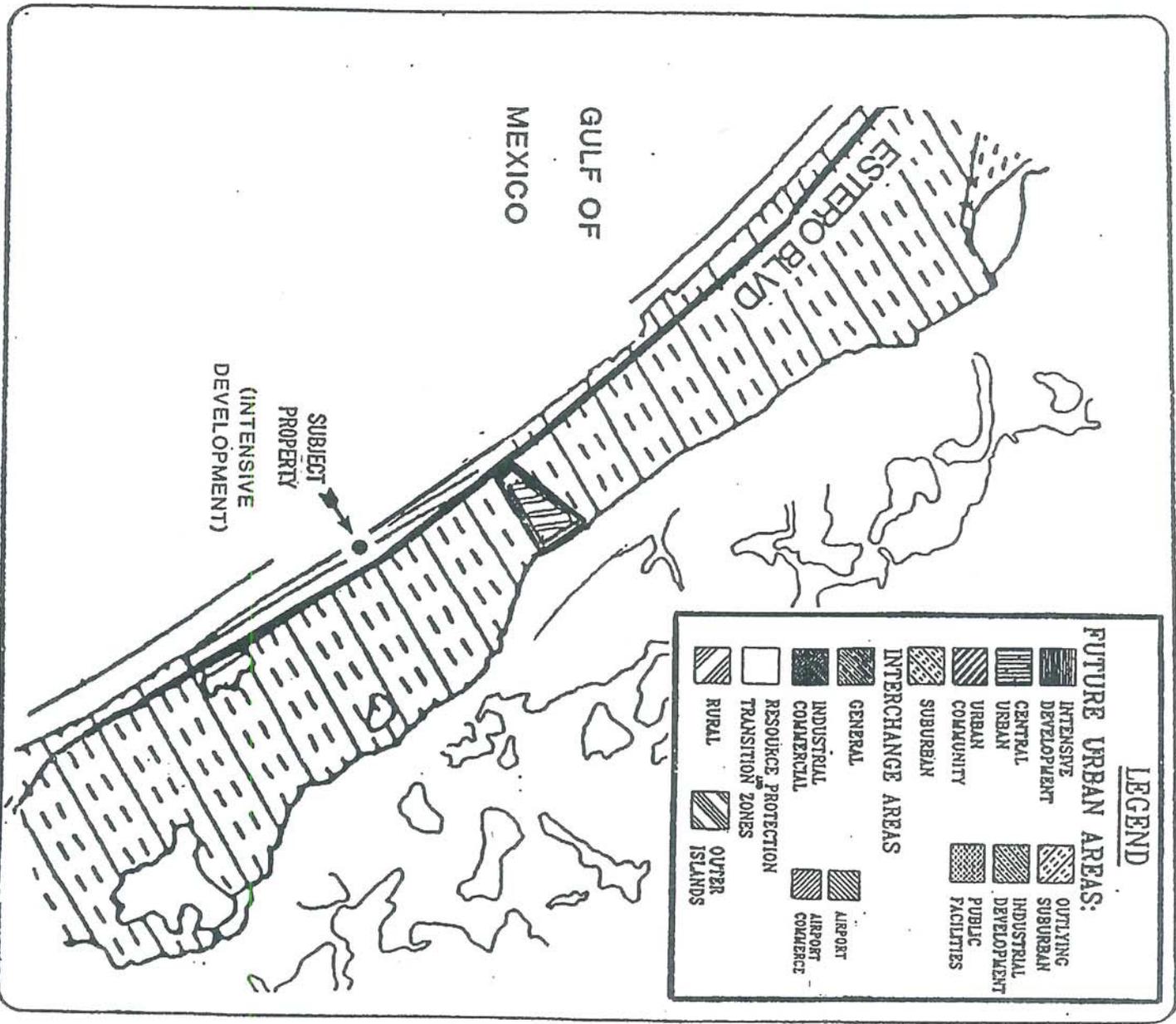
NORTH

FT MYERS BEACH

A

93-12-09-SP-02

Land Use Category



LEGEND

FUTURE URBAN AREAS:	
[Solid black box]	INTENSIVE DEVELOPMENT
[Vertical lines box]	CENTRAL URBAN
[Diagonal lines (top-left to bottom-right) box]	URBAN COMMUNITY
[Diagonal lines (top-right to bottom-left) box]	SUBURBAN
[Dotted box]	OUTLYING SUBURBAN
[Horizontal lines box]	INDUSTRIAL DEVELOPMENT
[Cross-hatch box]	PUBLIC FACILITIES
INTERCHANGE AREAS	
[Diagonal lines (top-left to bottom-right) box]	GENERAL
[Diagonal lines (top-right to bottom-left) box]	AIRPORT
[Solid black box]	INDUSTRIAL COMMERCIAL
[Diagonal lines (top-right to bottom-left) box]	AIRPORT CONCOURSE
[White box]	RESOURCE PROTECTION
[White box]	TRANSITION ZONES
[Diagonal lines (top-left to bottom-right) box]	RURAL
[Diagonal lines (top-right to bottom-left) box]	OUTER ISLANDS

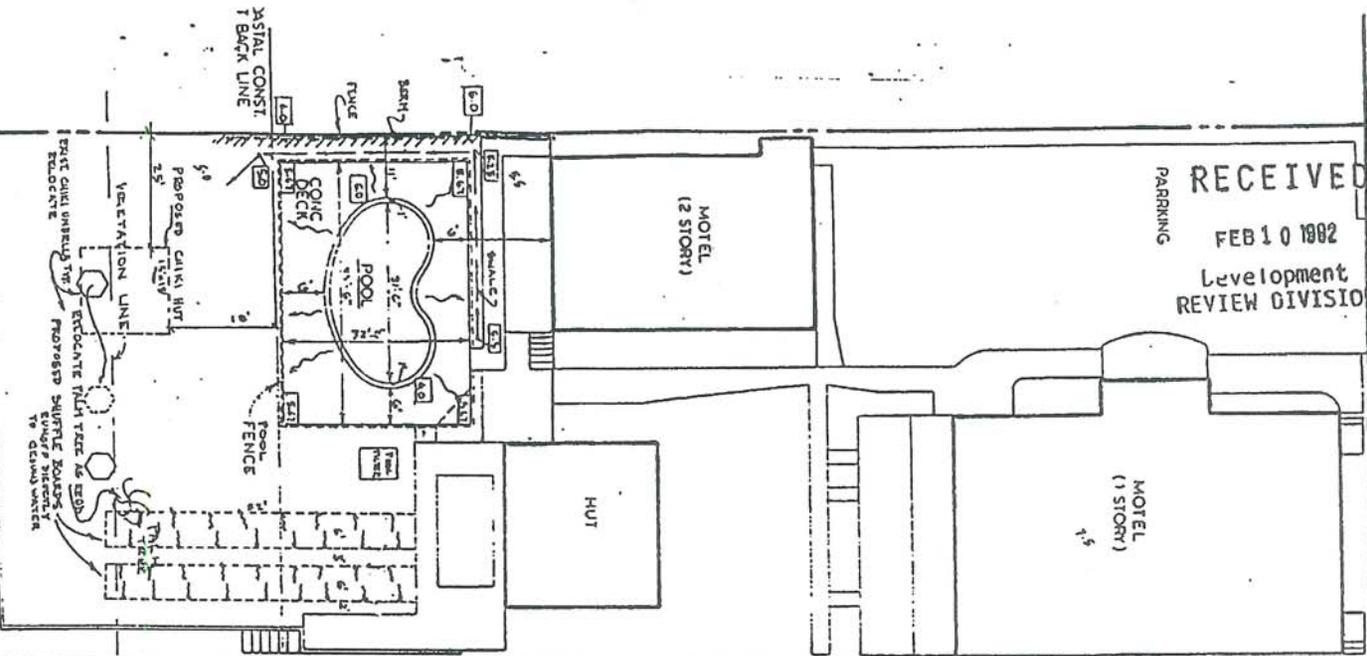
NORTH

B

93-12-09-SP-02

SAN BAR MOTEL

RECEIVED
FEB 10 1992
Development
REVIEW DIVISION



SEAWALL Dept. of Development Review

APPROVED

By *[Signature]* Date 3/16/92
For A-91-05-117-C-25

STAFFER (BOB) & CHRYL HUT

Exemption Type *[Blank]*

GULF OF MEXICO

This design is in accordance with the 1988 Standard Building Code w/ 1989 & 1990 revisions, Section 1205 & 1206 Co. \$ approved by appendix tip to 110 mph.

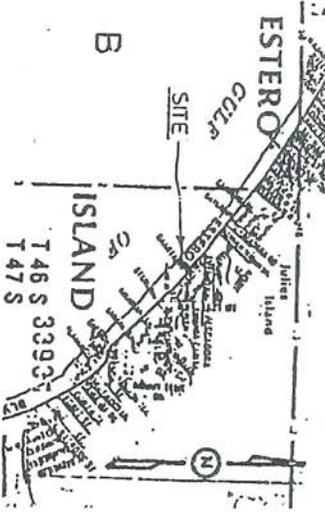
SITE PLAN

SCALE: 1" = 20'-0"

REQUIRES GULF COAST BACK APPROVAL

RECEIVED
DEC 10 1993

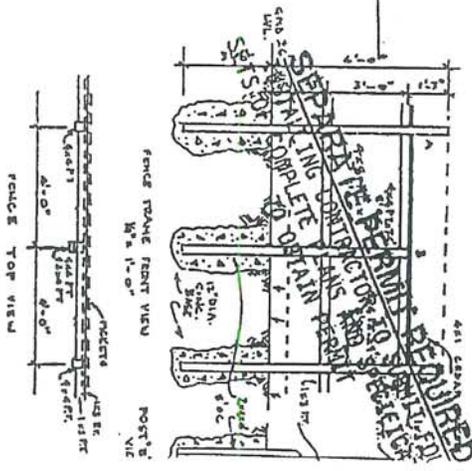
FLORIDA
COUNTY



LOCATION MAP

RAINAGE CALCULATION
 TOTAL DEPRESSIONS = 1,455 S.F.
 2.5/12 * DEPRESSIONS AREA (S.F.) * 0.5 = TOTAL RUNOFF
 2.5/12 * 1,455 S.F. * 0.50 = 151.67 C.F. TOTAL

RAINAGE CALCULATIONS FOR D.O. EXEMPTION



SAN BAR MOTEL
5480 ESTERO BLVD.
FT. MYERS BEACH

[Signature]
Barboul Stewart & Assoc. Inc.
3228 Evans Avenue
Fort Myers, FL 33901