

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2012- 004
PAINE/PURTELL REZONING

WHEREAS, Michael Roeder, authorized applicant for the owners of property located at 821 and 831 Estero Boulevard Fort Myers Beach, Florida has requested to rezone .33 acres from Residential Conservation (RC) to DOWNTOWN; and

WHEREAS, the subject property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP for the property is 24-46-23-W3-0050B.0050 and 24-46-23-W3-0050B.0070 and the legal description for the property is Lots 5, 6, 7, 8 and part of lots 9, 13, & 14, Island Shores Unit 2 Block B, according to the plat thereof recorded in Plat Book 9 Page 25, of the Public Records of Lee County, Florida; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 13, 2012; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-85.

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

The LPA recommends the Town Council **APPROVE/DENY** the request to rezone the subject property to the DOWNTOWN zoning district.

RECOMMENDED FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, Staff, and other interested parties at the hearing, and a review of the application and standards for the conventional rezoning approval, the LPA recommends that Town Council make the following findings and reach the following conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*
No errors or ambiguity exists surrounding the subject property and its zoning category that require correction. **APPROVE/DENY**
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
Changed conditions do exist, namely the change in future land use designation that makes the consideration of the proposed request for rezoning appropriate. **APPROVE/DENY**

3. *The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*

The proposed rezoning from RC to DOWNTOWN will not have any impact on the intent of Chapter 34. **APPROVE/DENY**

4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

The request is generally consistent with the goals, objectives, policies, and intent of the Comprehensive Plan. However, the submitted application does not contain sufficient information to establish that the rezoning request is consistent with the densities, intensities, general uses or level of services standards set forth in of Comprehensive Plan. **APPROVE/DENY**

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

The applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to Staff no present intention to change uses on the subject property, merely a desire to return to a commercial zoning similar to how the subject property was zoned prior to the Town's incorporation. With no plan to review, it is difficult to determine if the request meets or exceeds performance and locational standards. **APPROVE/DENY**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services including water, sewer, and power are available at the subject property. However, without a redevelopment plan, whether adequate capacity is available for the proposed land use change cannot be determined. The applicant has indicated that questions regarding capacity should be answered at the time of development order or permitting, however that can be problematic and should be addressed at the present zoning stage of land development. **APPROVE/DENY**

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

As existing residentially developed lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico beach, the subject property does not include any sensitive and/or environmentally critical lands. However, should these parcels be redeveloped into more intense uses as permitted within the DOWNTOWN zoning district any development would be required to meet all applicable environmental codes including but limited to Sea Turtle lighting requirement as found in LDC Section 14-79. **APPROVE/DENY**

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

With no development plan to review, it is difficult to determine if the request meets or exceeds performance and locational standards. The DOWNTOWN zoning district is the Town's most permissive zoning district with a wide variety of allowable uses by right. However, the Town does retain land and property development controls

through the Pedestrian Commercial future land use, Section 34-671 DOWNTOWN zoning district regulations, Section 34-677 Commercial Design Standards, FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code. **APPROVE/DENY**

9. *Whether the location of the request places an 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 development.*

Similarly to question #6 regarding urban services, the lack of redevelopment plan for the subject property increases the difficulty in adequately addressing this question. The subject property has driveway access onto Estero Boulevard, a constrained road with severe volume and capacity concerns further amplified during the winter months of peak tourist season. The applicant's assertion that "there is no certainty that the conversion to a commercial use would actually increase traffic beyond what is generated by the site now" is suspect because any additional density and/or intensity, by its very nature, will add to the traffic volume, and without a development plan this issue simply cannot be resolved.

The requested rezoning from RC to DOWNTOWN is not anticipated to generate any additional capacity need for the Lee County School District or the Town's Parks and Recreation Department. **APPROVE/DENY**

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

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

DULY PASSED AND ADOPTED THIS _____ day of MARCH, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

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

ATTEST:

By: _____
Michelle Mayher
Town Clerk



Town of Fort Myers Beach
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT

TYPE OF CASE: Conventional Rezoning
CASE NUMBER: FMBREZ2011-0001
LPA HEARING DATE: March 13, 2012
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Michael Roeder, authorized applicant
Knott Consoer Ebelini Hart & Swett, P.A.

Request: A rezoning of 821 and 831 Estero Boulevard
from **RESIDENTIAL CONSERVATION (RC)** to
DOWNTOWN

Subject property: Island Shores Unit 2
Block B
Plat Book 9 Page 25
Lots 5, 6, 7, 8 and part of lots 9, 13, & 14

Physical Address: 821 Estero Boulevard
831 Estero Boulevard

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

Parcel Size: .33 AC +/- (combined)

FLU: Pedestrian Commercial

Zoning: RESIDENTIAL CONSERVATION (RC)

Current use(s): Residential - Seasonal Rentals

Adjacent zoning and land uses:

North:	Lagoon Street Town of Fort Myers Beach Right-of-Way
South:	Estero Boulevard Town of Fort Myers Beach Right-of-Way
East:	7-11 convenience store Residential DOWNTOWN RESIDENTIAL CONSERVATION (RC) Pedestrian Commercial Mixed Residential
West:	Parking Lot COMMERCIAL PLANNED DEVELOPMENT (CPD) Recreation

II. BACKGROUND AND ANALYSIS

Background:

Prior to incorporation as a Town in 1995, Fort Myers Beach had zoning districts that were determined and designated by Lee County. Initially following incorporation the Town adopted Lee County’s Comprehensive Plan, Future Land Use Map (FLUM), Land Development Code (LDC) and zoning maps. These documents acted as a carry-over land development mechanisms until such a time that Town Staff, together with citizen input, could draft a new Comprehensive Plan, FLUM, LDC and official zoning map and Town Council could adopt them.

In January of 1999, the Town adopted its Comprehensive Plan and Future Land Use Map.

In 2003, Ordinance 03-03 provided the Town with its own Land Development Code (LDC) and interim zoning map, while the official zoning map was adopted by Resolution 04-16 in April of 2004.

Under Lee County land use and zoning regulations the two parcels, 821 and 831 Estero Boulevard, that together are the subject property, were designated in the Urban Community future land use category and zoned C-1. Both parcels were improved with residential structures that first appeared on the Lee County tax roll in 1954 (821 Estero) and 1964 (831 Estero).

When the Town adopted its own FLUM in 1999 the subject properties were in the newly created Mixed Residential land use category. In 2004 Resolution 04-16, rezoned the subject property into the Residential Conservation (RC) zoning district.

The property owners were not in favor of these land use and zoning changes and in 2010 they applied for and were granted a small scale Comprehensive Plan future land use map amendment. *(See Exhibit A)* This map amendment modified their land use category from Mixed Residential to Pedestrian Commercial; a land use category that now stretches from the subject property through the downtown core area and south along Estero Boulevard to approximately the DiamondHead Resort.

The request in this application is to return the subject property to a commercial zoning district, consistent with its past zoning and aligned with its current future land use designation.

Analysis:

The request of this application is to rezone the subject property from Residential Conservation to DOWNTOWN. As outlined in the Background section of this Staff report, the subject property went through a change in the future land use designation in 2010 from Mixed Residential to Pedestrian Commercial. A request for a change in zoning to reflect a change in future land use is a reasonable basis for a rezoning application. While it is not a requirement of a conventional rezoning application, the applicant has not provided a re-development plan that would allow Staff to fully analyze the effect the rezoning might have on the neighboring properties and surrounding area.

Staff recognizes that with the approved change in the future land use from Mixed Residential to Pedestrian Commercial the subject property retains a zoning category, RC, that is inconsistent with its future land use. The Comprehensive Plan defines the Pedestrian Commercial land use category as *"primarily a commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors."* The majority of parcels that fall within the Pedestrian Commercial future land use category are either zoned CPD or DOWNTOWN which are both predominantly commercial zoning districts. In contrast, Residential Conservation, RC, is defined in the LDC as a zoning district intended to *"recognize certain older neighborhoods that had been zoned for duplex, multifamily or mobile homes prior to incorporation of the Town."* RC is a predominantly residential zoning category and as seen in Table 34-2 of the LDC does not allow for commercial uses beyond an ATM. The DOWNTOWN zoning district's purpose is defined in Section 34-671 and is intended to *"create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets."* It is important to note that the DOWNTOWN district is the Town's most permissive district allowing the widest

variety of uses with the least amount of buffering, setbacks, and other similar property development regulations. This clearly is a district more suited to a future land use that encourages a pedestrian-oriented commercial environment. Future land use and zoning whenever possible should be compatible and work to further the intent of each other; as future land use is a goal that is achieved through the structure of zoning regulations.

The subject property is located within a six parcel loop that is enclosed by Estero Boulevard and Lagoon Street. *(See Exhibit B)* In addition to the subject property, within this loop there is a commercial parking lot, a 7-11 convenience store and two existing residential lots. The commercial parking lot (CPD) and the 7-11 (DOWNTOWN) are on the far ends of the loop with the remaining 4 interior lots, including the subject property, currently zoned RC.

Rezoning the subject property to DOWNTOWN will shift the balance of land uses within this loop from a majority of residential parcels to a majority of commercial parcels. According to the applicant, the property owners have no intention of redeveloping the property, so while the underlying land use and zoning may change there are no immediate plans for the existing uses to change. However, this is an important point to note. The DOWNTOWN district allows a wider variety of uses by right and redevelopment within this loop will change the dynamics of the area. Other than any required building permits, the property owners would not be required to come before the LPA or Town Council to change from their current use of seasonal rentals to a more intensive commercial use.

Should the rezoning be approved, a concern is that the remaining two parcels that are zoned RC within the Lagoon loop would not be adequately buffered and protected by this commercial intrusion. Section 34-677(b) discusses buffers in the DOWNTOWN district and states: *"There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in Ch. 10."* The description then goes on to include three exceptions to this rule however, each of the exceptions are for specific land areas none of which apply to the subject property. The current LDC does not contemplate redevelopment where residential would need to be buffered from commercial or mixed uses.

Staff has recognized that these buffering concerns could be addressed via two different methods:

1. Including of the remaining two RC parcels in this request to rezone effectively ensuring that entire inner Lagoon loop would have consistent zoning
 - a. it should be noted here however that the remaining RC parcels continue to have a Mixed Residential FLU and would therefore need to have the land use for those parcels amended to Pedestrian Commercial prior to a rezoning
2. The request for rezoning could be amended to become a Commercial Planned Development (CPD)

- a. A CPD would require a Master Concept Plan (MCP) that would permit Staff to recommend buffering requirements as conditions to the request that would protect the surrounding RC parcels
- b. An MCP would also allow for adequate review to ensure that urban services are available and retain capacity to meet the demand of the development.

Urban services including water, sewer, and power are available at the subject property. However, without a redevelopment plan, Staff is unable to determine if adequate capacity is available for the proposed land use change. Furthermore, the existing stormwater system on Estero Boulevard is not designed to handle runoff from existing properties or increased density on existing properties. There is no stormwater infrastructure system installed on Lagoon Street. Fort Myers Beach Public Works Department has commented that any increased density at the subject property will necessitate a thorough stormwater management plan and review prior to any permit or use approvals.

The lack of a redevelopment plan for the subject property increases the difficulty for Staff to adequately address impacts on infrastructure. The subject property has driveway access onto Estero Boulevard. Estero Boulevard, especially south of Times Square, is a constrained road with severe volume and capacity concerns that are further amplified during the winter months of peak tourist season. The applicant has not provided a Traffic Impact Statement. The subject property sits north of Times Square and that portion of Estero does not suffer the same degree of congestion. However, Staff does not agree with the applicant's assertion that "there is no certainty that the conversion to a commercial use would actually increase traffic beyond what is generated by the site now" as Staff finds that any additional density and/or intensity by its very nature will add to the traffic volume.

Staff does not anticipate the requested rezoning from RC to DOWNTOWN to generate any additional capacity need for the Lee County School District or the Town's Parks and Recreation Department.

Staff also reviewed the request for consistency with the Comprehensive Plan and identified the following goals, objectives and policies that applied to the requested zoning action:

Goal 4: To keep Fort Myers Beach a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict.

Objective 4-A: Small-Town Character – Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented "public realm" that allows people to move around without their cars even in the midst of peak-season congestion.

The three following policies have been identified as important aspects of both the small-town character, and as support for the rezoning request. Providing for a walkable, compact downtown area full of shops, restaurants, and other commercial uses could be furthered by this zoning request by providing additional commercial lands within walking proximity to the Times Square and Downtown core.

Policy 4-A-1: Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

Policy 4-A-2: The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

Policy 4-A-4: Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Boulevard that would make it a barrier to the beach for pedestrians).

The requested rezoning from the Residential Conservation (RC) zoning district to the Downtown zoning district could further these policies by providing additional commercial space adjacent to the Times Square area and diagonally across Estero Boulevard from Lynn Hall Park. However, without a redevelopment plan it is difficult for Staff to review how the subject property would be providing a human scale development. The existing structures on the subject property, residential buildings built in the 50's and 60's, do not necessarily help to create that vibrant pedestrian realm as envisioned in these policies.

Objective 4-B: Future Land Use Categories – Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusions.

Policy 4-B-6: "Pedestrian Commercial": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors.... Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

With the approved change in future land use from Mixed Residential to Pedestrian Commercial in 2010, Staff recognizes that most of the land use compatibility questions, i.e. commercial intrusion, were addressed and ultimately decided by Town Council at that time. *(See Exhibit C for LPA meeting minutes and resolution, Exhibit D Town Council meeting minutes and Exhibit E for Ordinance 10-02).*

However, the language in Policy 4-B-6 that requires that any new commercial activities within the Pedestrian Commercial FLU “*must meet the design concepts of this plan and the Land Development Code*” should be noted. Without a redevelopment plan from the applicant how can Staff ensure that any new commercial activities are in fact meeting the required design standards? Again, please note that a redevelopment plan is not a requirement of a conventional rezoning, but a Master Concept Plan is a requirement of a Commercial Planned Development.

The Pedestrian Commercial FLU is intended to be the primary commercial area in the Town. Rezoning of the subject property would further the policy intent of the Pedestrian Commercial FLU by allowing additional commercial development that could contribute the pedestrian-oriented public realm of the Downtown Core and Times Square area. The applicant has provided an analysis of the mix of residential/non-residential land uses in the Pedestrian Commercial land use category, and found that the approval of the requested rezoning would result in a maximum of 60.1% non-residential acreage in the Pedestrian Commercial category, well below the maximum of 90%.

Objective 4-C: Applying the Future Land Use Map – The Future Land Use Map shall be interpreted in accordance with the following policies.

Policy 4-C-2: Commercial Intensity – The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using the floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.

The Pedestrian Commercial category is intended to be the area for the most intense commercial development areas of the town. Not only does this policy contribute to the pedestrian realm of a walkable downtown, it protects residential areas from commercial intrusion by providing a designated area for commercial activities to take place. Approval of the request would give the subject property both the most intense land use and the most intense zoning. Because this property is at the western edge of the Pedestrian Commercial, there is concern about the intensity of the future commercial development of the property. Since the applicant has

proceeded with a conventional rezoning to DOWNTOWN, rather than a CPD with a strict schedule of uses and a MCP, where Town Council has an opportunity to approve the site layout and development pattern, the LDC will regulate any future commercial development. The relatively small size of the property, along with road rights-of-way on the front and back of the property, will have an effect of limiting the intensity of any commercial development that may take place on the property. However, as previously discussed the LDC does not provide a mechanism for adequate buffering between the subject property and the adjacent RC zoned parcels.

Policy 4-C-3 ii. Where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

The applicant points out that this policy has 4 components: First, that commercial uses are encouraged in the Pedestrian Commercial land use category and the Downtown zoning district would allow commercial uses consistent with nearby uses in Times Square; Second, that the Land Development Code will provide the guidelines as to how commercial development should respond to this category, which it does in LDC Sec. 34-671 et seq.; Third, there should be a streamlined review process, which the conventional rezoning to Downtown allows versus the longer process of a Commercial Planned Development; and Fourth, that the planned development zoning option is available to a landowner who seeks a use that is not otherwise provided for.

The applicant has decided to proceed with a conventional rezoning to allow commercial development of the property that is according to the applicant consistent and compatible with nearby uses elsewhere in the Times Square area.

OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD —Maintain minimum acceptable levels of service for the transportation system.

POLICY 7-I-1 Traffic congestion is a serious problem at Fort Myers Beach, caused by a combination of high tourism demand for its beaches and past over-building relative to road capacity. Neither factor is within the control of the Town of Fort Myers Beach, although its residents must tolerate congestion every winter. This comprehensive plan seeks to manage congestion levels and encourage alternate means of mobility including walking, bicycling, and trolleys.

POLICY 7-I-2 The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve-month period. Measurements from the permanent count station at Donora Boulevard shall be used for this standard.

POLICY 7-I-3 Figure 18 of this element is hereby adopted as the future transportation map of the Town of Fort Myers Beach.

***POLICY 7-J-2 TRAFFIC IMPACT ANALYSES:** A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:*

- i. decrease the thresholds for requiring traffic impact analyses;*
- ii. require them to study the cumulative impacts of potential development;*
- iii. use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.*

The traffic analysis offered by the applicant does not rise to the level of a Traffic Impact Statement, based upon the requirements set forth in LDC Section 10-286.

While Staff agrees that a rezoning to DOWNTOWN is more consistent with Pedestrian Commercial FLU than a RC zoning, as previously discussed concerns remain about the ability to effectively review redevelopment plans and provide adequate buffering and protection to the neighboring RC parcels.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of a conventional rezoning found in Section 34-85 of the LDC, Staff makes the following findings and conclusions:

- 1. Whether there exists an error or ambiguity which must be corrected.*

Staff does not find that any errors or ambiguity exist surrounding the subject property and its zoning category that require correction.

- 2. Whether there exist changed or changing conditions which make approval of the request appropriate.*

Staff feels changed conditions do exist, namely the change in future land use designation, that makes the consideration of the proposed request for rezoning appropriate.

- 3. The impact of a proposed change on the intent of Chapter 34 of the Fort Myers Beach Land Development Code.*

Staff does not anticipate that the proposed rezoning from RC to DOWNTOWN will have any impact on the intent of Chapter 34.

4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As discussed in the analysis section of this report the request is generally consistent with the goals, objectives, policies, and intent of the Comprehensive Plan. What is not clear from the submitted application is if the rezoning request is consistent with the densities, intensities and general uses of Comprehensive Plan. Further, the applicant has not demonstrated compliance with the Level of Service Standards set forth in the Comprehensive Plan.

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

The applicant has not submitted a plan for redevelopment with this request for rezoning. They have indicated to Staff no intention to change current uses on the subject property, they merely desire to return to a commercial zoning similar to zoning the subject property had prior to the Town's incorporation. With no plan to review, it is difficult to determine if the request meets or exceeds performance and locational standards.

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

Urban services including water, sewer, and power are available at the subject property. However, without a redevelopment plan, Staff is unable to determine if adequate capacity is available for the proposed land use change. The applicant has indicated that questions regarding capacity should be answered at the time of development order or permitting, however Staff feels that could become very problematic and should be addressed at the present zoning stage of land development.

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

As existing residentially developed lots located on interior parcels of land away from both the Matanzas Pass waterfront and the Gulf of Mexico beach, the subject property does not include any sensitive and/or environmentally critical lands. However, should these parcels be redeveloped into more intense uses as permitted within the DOWNTOWN zoning district any development would be required to meet all applicable environmental codes including but limited to Sea Turtle lighting requirement as found in LDC Section 14-79.

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

With no development plan to review, it is difficult to determine if the request meets or exceeds performance and locational standards. Given the lack of buffering requirements in the Downtown District and the lack of any redevelopment plans accompanying this request, Staff is unable to determine that this request would be compatible with existing or planned uses. Further, the DOWNTOWN zoning district is the Town's most permissive zoning district with a wide variety of allowable uses by right. However, the Town does retain land and property development controls through the Pedestrian Commercial future land use, Section 34-671: DOWNTOWN zoning district regulations, Section 34-677: Commercial design Standards, FEMA flood elevation and substantial improvement compliance, and other sections of the Land Development Code.

9. *Whether the location of the request places an 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 development.*

Similarly to question #6 regarding urban services, the lack of redevelopment plan for the subject property increases the difficulty for Staff to adequately address this question. The subject property has driveway access onto Estero Boulevard, a constrained road with severe volume and capacity concerns further amplified during the winter months of peak tourist season. Staff does not agree with the applicant's assertion that "there is no certainty that the conversion to a commercial use would actually increase traffic beyond what is generated by the site now" as Staff finds that any additional density and/or intensity by its very nature will add to the traffic volume, and without a development plan this issue simply cannot be resolved. Accordingly, given the applicant's lack of analysis, Staff cannot determine whether the request will place an undue burden on services and facilities.

Staff does not anticipate the requested rezoning from RC to DOWNTOWN will generate any additional capacity need for the Lee County School District or the Town's Parks and Recreation Department.

III. RECOMMENDATION

Conventional rezoning requests do not allow for conditions of approval, therefore Staff can not recommend requirements above and beyond those set forth in the DOWNTOWN zoning district regulations. Staff remains concerned that without buffering between the subject property and the neighboring RC parcels, the

rezoning could be considered commercial intrusion into a residential neighborhood. Further, the applicant has failed to adequately address the impact of the request on public services and facilities.

However, with the change in future land use from Mixed Residential to Pedestrian Commercial there currently exists an inconsistency between future land use and zoning that the request adequately addresses.

After consideration of the aforementioned analysis, including potential compatibility concerns with surrounding uses and potential inconsistency with the Comprehensive Plan, Staff recommends **DENIAL** of the requested rezoning from Residential Conservation (RC) to DOWNTOWN.

IV. CONCLUSION

While rezoning the property from Residential Conservation (RC) to DOWNTOWN is consistent with the Pedestrian Commercial future land use category as contemplated in the Fort Myers Beach Comprehensive Plan, Staff's has serious concerns about the application's overall consistency with the Comprehensive Plan, including compatibility measures and Level of Service Standards.

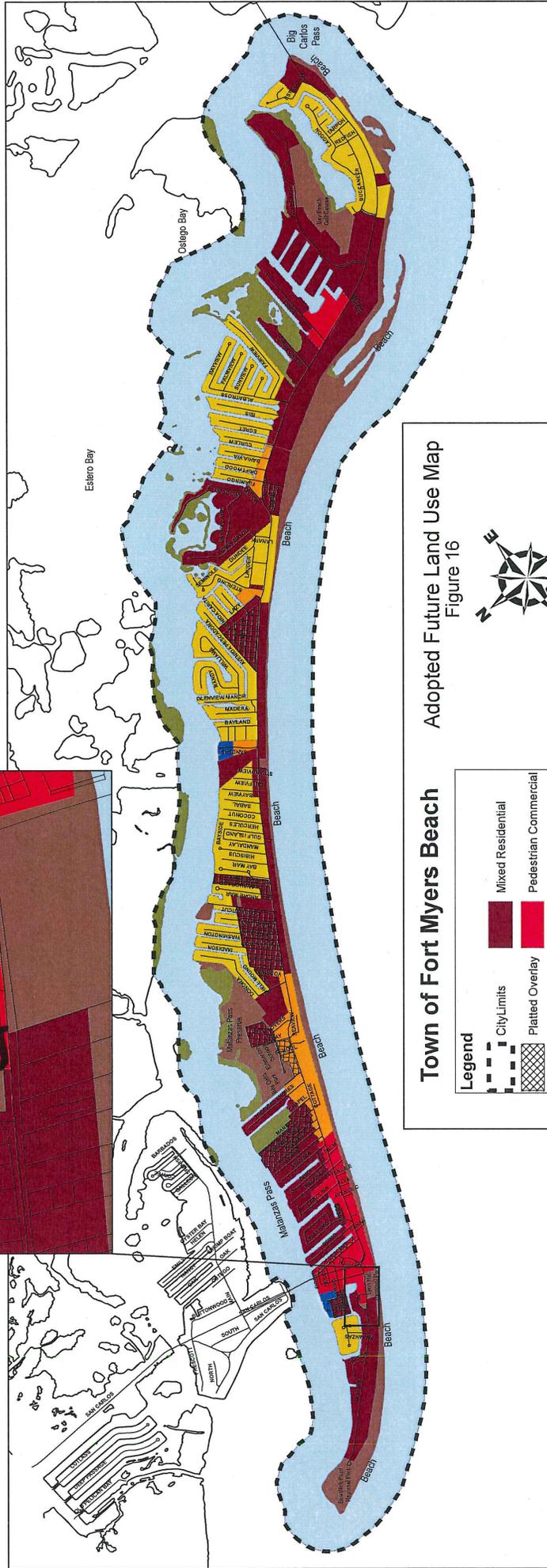
If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-85 regarding Rezoning, Town Council should deny the request as provided in LDC Section 34-85(4).

Staff recommends **DENIAL** of the requested rezoning.

Exhibits:

- A – May 2010 revised Future Land Use Map of the Town of Fort Myers Beach
- B- Official Zoning Map of the Town of Fort Myers Beach
- C- Local Planning Agency meeting minutes and resolution from 3/23/10 meeting
- D – Town Council meeting minutes from 4/19/10 meeting
- E – Ordinance 10-02

(EXHIBIT A)



Adopted Future Land Use Map
Figure 16

Town of Fort Myers Beach

Legend	
	City Limits
	Platted Overlay
	Boulevard
	Low Density
	Marina
	Mixed Residential
	Pedestrian Commercial
	Recreation
	Tidal Water
	Wetlands

Originally Prepared by Spilowski Planning Associates
and Lee County Property Appraiser's Office
Updated and Reissued by Fort Myers Beach
Community Development Department



January 1, 1999

As Amended Through May 20, 2010

(EXHIBIT B)

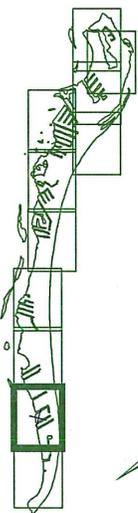
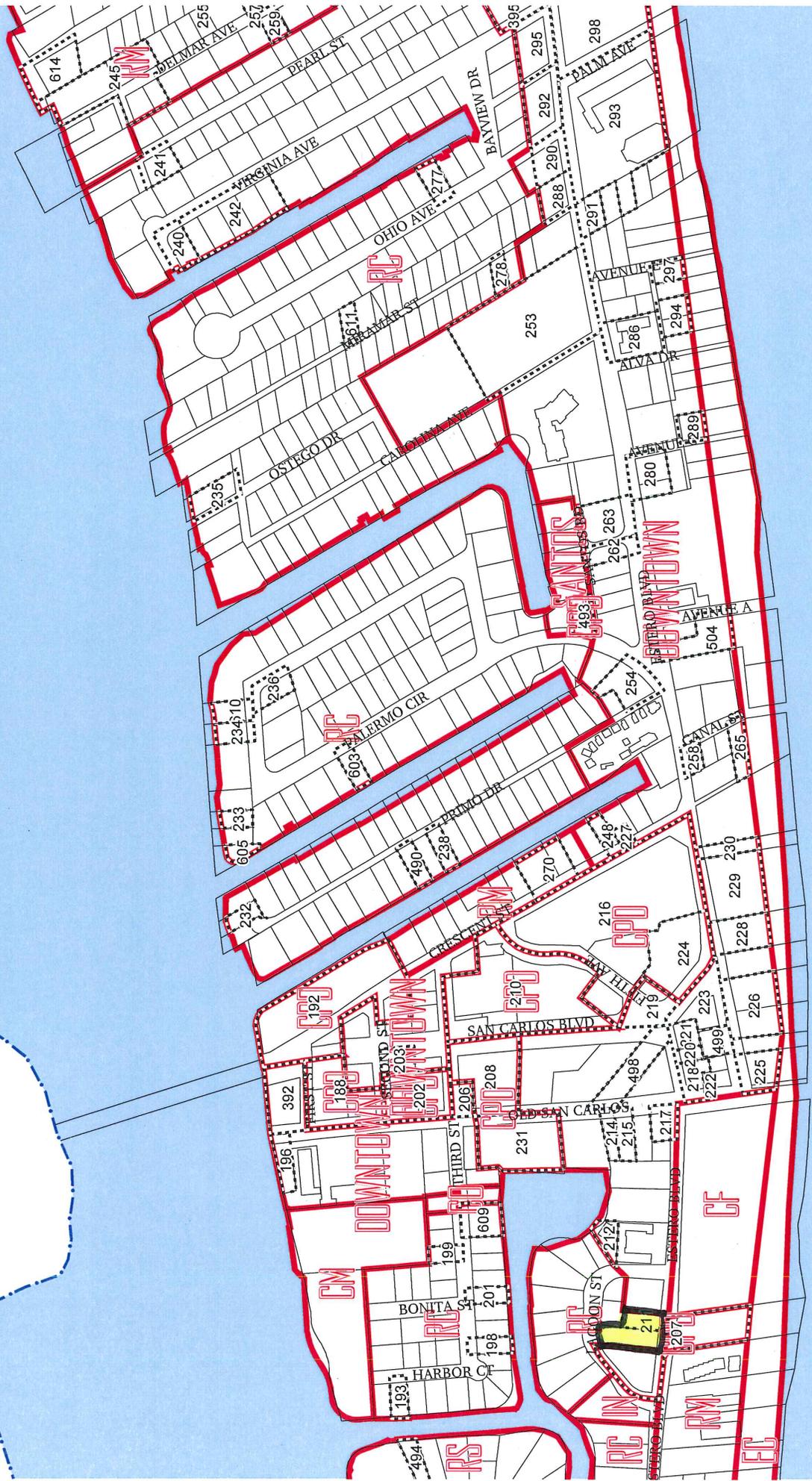


Exhibit A - Fort Myers Beach Official Zoning Map
(updated through April 1, 2004)

- Zoning districts are surrounded by solid line --
- For dotted outlines, see table for key --



(EXHIBIT C)

MINUTES
FORT MYERS BEACH
Local Planning Agency

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

Tuesday, March 23, 2010

I. CALL TO ORDER

Meeting was called to order at 9:03AM by Chairperson Joanne Shamp. Other members present:

Carleton Ryffel
Chuck Moorefield
Rochelle Kay
John Kakatsch
Bill Van Duzer-excused

Staff present: Dr. Frank Shockey
LPA Attorney, Anne Dalton

II. PLEDGE OF ALLEGIANCE and INVOCATION
Rochelle Kay

III. MINUTES
A. Minutes of February 9, 2010

Motion: Mr. Ryffel moved to accept the minutes, as presented.

Seconded by Ms. Kay;

Vote: Motion passed 5-0

IV. PUBLIC HEARINGS

A. SEZ2010-0001 FMB “Hooters” COP upgrade/Resolution 2010-01

Ms. Shamp opened the hearing and Ms. Dalton swore in witnesses. Chair asked for the Affidavit of Publication. Dr. Shockey presented same from the News-Press to verify that the notice was published in that periodical on March 13, 2010 and the affidavit is also on the Town website with this meeting’s materials.

Ms. Shamp polled members for ex-parte communications. Ms. Shamp had a site visit; Mr. Ryffel stated that he did the original zoning many years ago, but has no ongoing financial relationship with the applicant.

Paul Lynch, Hooters and Mauhi Enterprises, addressed the LPA for the applicant. He advised that the request is to increase the restaurant's beer and wine license from a 2 COP to a 4 COP, to allow full liquor service on the premises. In addition, this would include full liquor service outdoors, as it is currently with beer and wine service.

Mr. Kakatsch asked if the applicant would consider blocking the front walkways of the property so that patrons would not be able to leave the porch and directly enter onto Estero Blvd. The applicant answered that he thought this would create a fire code violation and added that his staff monitors patrons so that they do not take alcohol from the premises onto the street.

Dr. Shockey then presented for the staff and gave a brief overview of the request for the special exception. He advised that the conditions under the present COP also prohibited music and other outdoor entertainment. He pointed out that the applicant has indicated the hours of operation they would like for service and consumption of alcoholic beverages, but that restricting the hours to hours less than those provided by Town ordinance would need to be for the health, safety, and welfare of the community. He asked that the LPA accept the report as staff's testimony.

Mr. Ryffel asked Dr. Shockey for clarification of the staff's recommendation referenced in pg. 4 of the report. Dr. Shockey stated that the LPA needs to make a finding here whether it is necessary to protect the public health, safety and welfare to have more restrictive hours than 7:00 AM to 2:00 AM.

Mr. Kakatsch said he would like to see the hours be from 11:00 AM in the morning and the evening hours as indicated by the applicant. Dr. Shockey said that there are several residences close by the restaurant, on the beach, which may be impacted by later hours and this may be a reason why more restrictive hours would be better for their welfare. Mr. Kakatsch asked if staff had considered the option he brought up earlier about the stairs. Staff had not considered requiring the applicant to change the configuration in that way, but if the LPA felt it necessary, they could make that recommendation to the Council for consideration.

Mr. Lynch again addressed the LPA to say that one of the sets of stairs referred to by Mr. Kakatsch serves other tenants in the building and feels that changing that configuration would impact them as well.

PUBLIC COMMENT:

Ms. Shamp called for public comment. No members of the public addressed the meeting. Public comment was closed.

LPA DISCUSSION:

Mr. Kakatsch expressed his concern for the hours of operation and the possibility of the patrons walking down the stairs to the street, not being properly monitored by personnel, after consuming "liquor, which is more potent than beer and wine," at 2:00 AM and "what could happen" in such circumstances.

Ms. Kay said that she is pleased with the applicant's offer to operate between 11:00 AM and midnight.

Mr. Moorefield opined that changing the stairs doesn't really seem like it will make much of a difference.

Ms. Shamp agrees that changing the stairway will not make much difference, but feels that the more restrictive hours, as the applicant suggested, would be beneficial to the welfare of the neighborhood. There was a consensus that the hours be restricted to the hours indicated by the applicant.

Motion: Mr. Ryffel moved to approve Resolution 2010-01, as follows:

Pg. 1, approved; pg. 2, #1: "changing conditions exist..."; #2: "special exception is consistent..."

#3: "requested special exception as conditioned meets or exceeds..."

Pg. 3, #4: "requested special exception as conditioned will protect..."

#5: "requested special exception as conditioned will be compatible...and will not cause..." #6: "requested special exception as conditioned will be in compliance.." Sales, service and consumption of alcoholic beverages must not begin earlier than 11:00 AM and must end no later than midnight M-TH; must begin no earlier than 11:00 AM and end no later than 1:00 AM on Friday and Saturday and must begin no earlier than 12:00 noon and end no later than 10:00 PM on Sunday.

Seconded by Ms. Kay;

Vote: Motion passed 4-1, with Mr. Kakatsch opposed.

Mr. Kakatsch commented that he opposed the motion because he felt the stairway configuration deserved some further consideration.

Hearing closed at 9:32 AM.

At this point the Chair recognized the newest member of the LPA, Mr. John Kakatsch, who gave a brief biography to the members.

B. CPA2010-0001 Paine/Purtell Comp Plan Amendment Resolution 2010-02

Chair asked for the Affidavit of Publication. Dr. Shockey presented same from the News-Press to verify that the notice was published in that periodical on March 13, 2010 and the affidavit is also on the Town website.

Ms. Dalton read the ordinance caption into the record: *"Ordinance #10-xx-an ordinance of the Town of Fort Myers Beach providing for a small scale amendment to the Comp Plan of the Town of Fort Myers Beach to reclassify certain property from Mixed Residential category to the Pedestrian Commercial category on the future land use map, providing authority, providing for conflicts, severability and establishing an*

effective date.”

Ms. Shamp called for ex-parte communication disclosure. Mr. Ryffel had a brief discussion with Mike Roeder. Mr. Moorefield-no contact. Ms. Shamp had a site visit. Ms. Kay-no contact. Mr. Kakatsch had a site visit. Ms. Shamp reminded the members that there are 2 steps in this process to keep in mind for discussion: first, whether the request meets the statutory requirements to be considered a “small scale” amendment. Secondly, if it is indeed a “small scale” amendment does it then meet the requirements for approval by this town?

Dr. Shockey presented a brief overview of the ordinance for the members. He said the 2 pieces of property involved are described at the end of the staff report as Exhibits A and B (see report). These are 2 lots in a subdivision and he referred to a section of the Future Land Use Map given to the members. He said that, should the ordinance be adopted, it would change the future land use map categories applied to these two properties, as mentioned in the ordinance caption.

Ms. Shamp invited the applicant to present. Mr. Mike Roeder addressed the LPA and said he represents James Purtell and Fred Paine (both present), owners of the property. The property is 831 and 821 Estero Blvd., next to 7-11 on one side and a lot zoned for a public parking lot. He said that the currently requested change would not change the zoning in any way.

Mr. Roeder referred to Ms. Shamp’s comment about this meeting statutory requirement for small scale amendments. He quoted section 163.3187C, which requires the property to be less than 10 acres, and this lot is .33 acres. He cited other points of the section and said that they don’t apply. He said that the most important point here is the “spirit of the Comp Plan” and pointed out that this cannot be consistent with the Comp Plan since this would *amend* the Comp Plan.

Mr. Roeder gave a brief background of this item and said that this property had been zoned commercial originally. He said that the staff report indicated that the first Comp Plan was in 1986 but, he said, it was actually in 1979. He continued that the first Land Use map was adopted by the county in 1984 and it showed this property as “urban community,” which would allow many uses. In 1991, the county amended the Comp Plan to insert 18.2.1, which basically mandated that there would need to be rezoning of the CPD to be able to do any new commercial development. Mr. Roeder went on to point out that the staff report does not reflect that in 1992, this policy was revised, and he read the revision into the record,

“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. All commercial rezoning shall be required to rezone to the commercial planned zoning category; residential density shall be limited to existing base densities provided by the Future Land Use element.” He emphasized that final paragraph indicated that a specific redevelopment plan was to have been formulated and that, *“until that zoning plan*

is adopted property which has existing commercial zoning can be developed or redeveloped consistent with that zoning and the Lee Plan. This policy will be revisited in the 1993-94 plan amendment cycle.”

Mr. Roeder added that there were no other significant changes/additions since then except to renumber the policy. He said that when the applicant purchased the property, it was zoned C1 and it allowed him to use the commercial zoning. In December of that same year, the Town did amend Chapter 34, ordinance 97-21, which provided that any new commercial development required rezoning to CDP. Still, he insisted, the applicant was allowed to use the property as it was zoned as C1 when they acquired the property earlier that year. Another point was in Jan. of 1999, when the Town developed its first land use Comp Plan, the designation was changed from “urban community” to “mixed residential,” which he said narrowed the usage opportunities. Mr. Roeder continued, saying that in 2003 the Town adopted the revised zoning map, which changed the zoning of the property to RC, Residential Conservation. The property owners affected by the change asked for relief and Council asked staff to check into possible remedies to the situation. At the time, staff suggested that a way to solve the problem is by way of this “small scale amendment” process.

Mr. Roeder stated that the new zoning code was adopted in March 2003, the revised Comp Plan amendment was submitted in August 2003, but the case was not heard until June 2004; by then, he noted, there was a new council and the request was denied by 2-2 vote with one abstention. The request was different then the present request in that it was for all of the property fronting on Estero and Lagoon St. to be changed to commercial. Today, the applicant is only asking for the change for the 2 lots that front on Estero Blvd.

Mr. Ryffel had no questions. Mr. Moorefield had no questions.

Mr. Kakatsch said he looked at the property and asked if the buildings on the lots are occupied. Mr. Roeder explained that they are used primarily for rental purposes.

Ms. Kay asked if Mr. Roeder had knowledge of the plans for the property. He admitted that the applicant has no specific plan in mind at this time but that it would likely be for some type of mixed use, possibly small scale commercial with apartments or similar use. This could be dealt with in detail, he said, during future consideration of possible rezoning.

Ms. Shamp asked for clarification as to the actual lots and the proper addresses and asked if the applicant had considered splitting the Paine property so that a commercial impact would not occur in the rear near residential uses on Lagoon Street.

Mr. Kakatsch asked if the applicant is looking to develop the 2 properties as one and Mr. Roeder said they were not sure—that might be the best way, or it might not.

Dr. Shockey presented for the staff and again briefly summarized the reason for the request. He said that pages 1 and 2 of the staff report contain a few of the pertinent policies of the Comp Plan related to the request. These topics are appropriate locations of commercial area and uses and restrictions on intensifying commercial uses in residential neighborhoods. Dr. Shockey explained that the terminology “small scale amendment” is in state law and is not related to any Town policy to distinguish these from other amendments. Most importantly, to qualify as a small-scale amendment, the amendment must only be for parcels of 10 acres or less and it can be only an amendment to the Future Land Use map category that applies to a property. He said that, basically, it appears that the applicant’s request does meet all of these criteria to be a small scale amendment and that is the recommendation of the staff.

Dr. Shockey briefly discussed the history of the property and said that it is not the most relevant aspect of what is going on here today, regardless of whether the county’s temporizing with its comp plan policies was effective planning or not. He feels that the most interesting part of the staff report is the section that discusses the appropriateness of the amendment based on its merits. The mixed residential category addresses older subdivision with mixed housing types on smaller lots, newer high rise buildings and RV parks, and is designed to ensure that FMB retains a variety of neighborhood and housing types and limits commercial activities to lower impact uses such as offices, motels, churches, etc. that must be sensitive to nearby residential uses and complement any adjoining commercial uses, etc. The Pedestrian Commercial category is a primarily commercial district that applies to the intense activity centers of Times Square and the area around Villa Santini Plaza, etc. Dr. Shockey said that the main point in the Comp Plan that may have been a problem in the past is the policy that restricts the intrusion of commercial activities into residential neighborhoods. He said what needs to be determined is whether this is strictly a residential area: although there are residential uses here, there are also commercial uses and mixed uses.

Dr. Shockey went on to discuss other parts of the Comp Plan policies that apply here, such as the one that talks about in order to intensify commercial or residential density, the change must be shown to be clearly in a public interest and not just a private interest of the petitioning land owner. Another point important to bring out, in Dr. Shockey’s opinion, is that the types of buildings that may be built here are constrained by coastal issues. He gave a few examples and added that this is also a flood zone, which would prevent any type of enclosure on the ground floor of new buildings being used for anything but parking or storage. He then asked that the staff report be submitted as staff testimony, and he acknowledged Mr. Roeder’s copy of the additional changes to the County’s comprehensive plan should be included in the material, for the record.

Mr. Kakatsch had no questions.

Ms. Kay asked if the existing buildings could be modified rather than rebuilt. Dr. Shockey agreed that this is a possibility if there is minor remodeling for a cost of under 50% of the value of the building. These buildings could remain as long as they

are not “substantially improved,” in which case they would have to be elevated or replaced with buildings that would be elevated. Dr. Shockey said that if the amendment is approved, the zoning would remain RC, which allows for single family homes, 2 family homes within certain restrictions, and little else, unless or until the property were rezoned.

Mr. Ryffel and Mr. Moorefield had no questions.

Ms. Shamp asked if there was sufficient notice to the surrounding affected properties. Dr. Shockey replied that the notice appeared in the newspapers 10 days in advance, he put a sign in front of the property a week ago, and paper notices were mailed to neighbors (only 1 was returned so far as “undeliverable”). Ms. Shamp asked if there are any other 7-11 stores that operate in mixed residential zones. Dr. Shockey said that there are some businesses in areas that are in the mixed residential category but most were established and in place before the Town developed its Comp Plan.

Ms. Shamp opened public comment. There was no public comment.

Ms. Shamp invited the applicant to comment. Mr. Roeder again addressed the meeting. He echoed Dr. Shockey’s comments that the Comp Plan is the main focus here, especially dealing with commercial intrusion. He reiterated that this property is not suited in its location for traditional residential use and feels the amendment is in the best interests of the public. Ms. Kay asked what is behind 831 Estero. Mr. Raider said there is a single family home behind the 7-11 and another residential building behind Mr. Purtell’s lot.

With no further questions, LPA discussion ensued. Mr. Kakatsch said he has looked at the property and has no concerns with this change as he doesn’t believe it is a residential area at all. Ms. Kay agreed.

Ms. Shamp disagreed, and commented that at some point commercial intrusion needs to end. She said that the area is mostly residential and that peace and quiet should be protected, as was the basis for the Town creating its Comp Plan when the county was not protecting the residents against this intrusion. She does agree that this probably applies as a small scale amendment but also feels that changing the category is more in the private interest than in the public interest.

Mr. Ryffel said that, looking at the plans it does appear to him that this property is the “end” of the pedestrian area. He does not agree that this is a commercial intrusion in any way and sees the whole loop of Lagoon St. as connected to the nearby pedestrian commercial area; he hopes the other neighbors will come forward with that in the future. He believes this to be in the public interest to change this because he sees it as a logical land use. He pointed out that this step will allow the applicants to begin the zoning process through which residents and members will be able to do something “that makes sense” here.

Ms. Shamp divided the discussion into 2 steps for clarity. The first step will be deciding if the request meets the regulatory requirements to be considered a “small scale amendment.” Resolution 2010-02, Proposed Findings of Fact and Conclusion of Law, #1 A through H will be discussed here.

After looking these over, there was a consensus that this does fit the criteria for small scale amendment.

The second discussion involves whether this change is in the best interest of the health, safety and welfare of the Town's residents and property owners. There was discussion about the legal terms "in best interest of the health, safety and welfare of the Town's residents and property owners."

Motion: Mr. Ryffel moved to approve Resolution 2010-02, as follows:

Pg. 1 "be it resolved that the LPA recommends approval..."

Proposed Finding of Fact and Conclusions of Law: #1: "the proposed amendment does qualify as a small scale amendment.."

A: "does involve 10 acres or less...will not exceed 120 acres..."

C: "the proposed FLUM amendment does not involve the same property granted a change in the prior 12..."

D: "the proposed amendment does not involve the same owner's property within 200 ft..."

E: "the proposed amendment does not involve a text change to the goals, policies and objectives...and does only propose a land use change for the Future Land Use map..."

F: "the property is not located within an area of critical state concern..."

G: "if the proposed amendment involves a residential use, the residential use does have a density of 10 units or less per acre or the proposed Future Land Use category does allow a maximum residential use of the same or less..."

H: "the proposed amendment does not involve a site that is designated by the governor..."

#2: "it is in the best interest of the health, safety and welfare...and such change is necessary to provide for orderly growth..."

2A: "the proposed amendment will likely have no impact on affected traffic utilities..."

B: "will likely have a positive impact due to possible additional uses likely to contribute to walkability and the pedestrian oriented public realm..."

C: "will have a positive impact allowing future rezoning to consider a mix of uses that would complement the current mix of residential, commercial and civic uses in the immediate vicinity."

Seconded by Ms. Kay.

Discussion: Ms. Shamp agrees it is a small scale amendment but does not feel it is in the best interest of the Town.

Vote: Motion passed 4-1 with Ms. Shamp opposed (Mr. Van Duzer was absent with excuse).

Hearing closed at 10:48 AM.

Short recess.

Reconvene at 11:04 AM

V. ADJOURN AS LPA/RECONVENE AS HPB

Motion: Mr. Kakatsch moved to adjourn as LPA and reconvene as the HPB.

Seconded by Ms. Kay;

Vote: Motion passed 5-0.

Ms. Kay called the meeting to order at 11:05 AM and handed out a packet of information regarding the HAC meeting she attended. The Historic Plaques and the Vistas projects were discussed and Doug Speirn-Smith had additional photos of the Colorado project Ms. Kay had presented some time ago. She referred to the information in the packets which showed samples of the signs. Doug Speirn-Smith explained that he is from Colorado thus he knew the samples that Ms. Kay had talked about so he helped her get the information. Ms. Shamp said she is very excited about this program and thanked him for helping. She asked if any of the new LPA members would have an interest in being part of the HAC. Mr. Kakatsch is interested and Ms. Kay will get him information and keep him informed. She gave a few details about what the HAC is and does. Discussion ensued about the signs and the price, as well as the source of the funding.

Motion: Ms. Shamp moved to adjourn as the HPB and reconvene as the LPA.

Seconded by Mr. Ryffel.

Vote: Motion passed 5-0.

VI. ADJOURN AS HPB/RECONVENE AS LPA

Ms. Shamp called the meeting to order at 11:22 AM with all members still present except Mr. Van Duzer, who is excused.

VII. LPA MEMBER ITEMS AND REPORTS

Mr. Ryffel had nothing to report.
Mr. Moorefield had nothing to report.
Ms. Kay had nothing to report.
Mr. Kakatsch had nothing to report.
Ms. Shamp had nothing to report.

VIII. LPA ATTORNEY ITEMS

Ms. Dalton had nothing to report.

IX. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Dr. Shockey had nothing to report.

X. LPA ACTION ITEM LIST REVIEW

- LPA Resolution 2009-22 Animal Control-Ms. Kay reported this has moved through and the ordinance has been adopted.
- Gulf View-Dr. Shockey reported that the Council did adopt a vacation ordinance; this is being prepared for Council TBD after vacation hearing

- LPA Membership-Ms. Shamp; 2nd hearing on April 5th
- COP expansion on the beach-moved to another agenda-TBD (Council may have a joint meeting with the LPA on May 5th to discuss)
- Refuse containers-Dr. Shockey reported that this is on the agenda for April 5th; Ms. Kay
- Resolution 2010-0001 (Hooters)-TBD
- Resolution 2010-0002-Introduction April 5; Ms. Kay

Continued Hearings

- Shipwreck – October 12

Future Work Activities

- ROW-Residential Connections; TBD
- Storm water; TBD
- Seasonal Parking-April 13; Dr. Shockey
- HPB budget request to Council; May 11-Ms. Kay
- Resolution for HPB Budget-June
- CIP Review-June 8 meeting
- Ms. Shamp has excused absence for June 8th; Mr. Kakatsch requested an excused absence for June as well

The members extended well wishes to Mr. Bill Van Duzer and welcomed the new members, thanking them for their service.

XI. ADJOURNMENT

Motion: Mr. Ryffel moved to adjourn.

Seconded by Mr. Kakatsch;

Vote: Motion passed 5-0.

Meeting adjourned at 11:48 AM.

Next meeting April 13, 2010 at 9:00 AM.

Adopted _____ with/without changes. Motion by _____
(DATE)

Vote: _____

- End of document

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2010-03
SMALL-SCALE AMENDMENT TO
TOWN COMPREHENSIVE PLAN FUTURE LAND USE MAP

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

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

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March 23, 2010 to consider a proposed Town Ordinance, which is attached hereto as Exhibit A and is hereby incorporated by reference; and

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

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends** that Town Council approve and adopt the proposed Town Ordinance to amend the Comprehensive Plan Future Land Use Map (FLUM) so as to reclassify the subject area, approximately 0.33 acres, from the "Mixed Residential" FLUM category to the "Pedestrian Commercial" FLUM, and **recommends** the following findings of fact and conclusions with regard thereto:

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The proposed amendment to the Town Comprehensive Plan **DOES** qualify as a small scale amendment pursuant to the requirements of Section 163.3187, Florida Statutes, for the following reasons:

a. the proposed amendment **DOES** involve a use of 10 acres or fewer;
and

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

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

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

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

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

g. If the proposed amendment involves a residential land use, the residential land use **DOES HAVE** a density of 10 units or less per acre or the proposed future land use category **DOES** allow a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category.

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

2. It **IS** in the best interest of the health, safety and welfare of the Town's residents and property owners for the Town Council to make this change to the FLUM and such change **IS** necessary to provide for orderly future growth of the community, for the following reasons:

a. The proposed amendment will likely have **NO IMPACT** on affected traffic, utilities, other services, and future capital expenditures; and

b. the proposed amendment will likely have a **POSITIVE IMPACT** of possible additional uses which would likely contribute to the walkability of that area and the pedestrian-oriented public realm; and

c. the proposed amendment will likely have a **POSITIVE IMPACT** of allowing future rezoning(s) to consider a mix of uses that would complement the current mix of residential, commercial and civic uses in the immediate vicinity.

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

property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan.

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

Joanne Shamp, Chair <u>nay</u>	Bill Van Duzer, Vice Chair <u>absent</u>	Rochelle Kay <u>aye</u>
Chuck Moorefield <u>aye</u>	Carleton Ryffel <u>aye</u>	John Kakatsch <u>aye</u>

DULY PASSED AND ADOPTED THIS 23rd day of March, 2010.

LPA of the Town of Fort Myers Beach

By: Joanne K Shamp
Joanne Shamp, LPA Chair

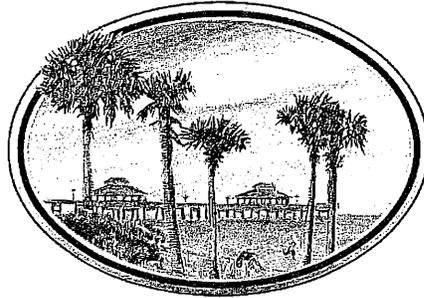
Approved as to legal sufficiency:

ATTEST:

By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

By: Michelle Mayher
Michelle Mayher, Town Clerk

(EXHIBIT D)



MINUTES

FORT MYERS BEACH TOWN COUNCIL TOWN HALL – COUNCIL CHAMBERS

2523 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931

April 19, 2010

6:30 PM

I. CALL TO ORDER

Mayor Kiker called the meeting to order at 6:32 p.m. Present with Mayor Kiker was Vice Mayor Raymond, Council members Babcock, List and Mandel along with Town Manager Stewart, Town Attorney Dalton and Town Clerk Michelle Mayher.

II. INVOCATION

Invocation was led by Councilmember List.

III. PLEDGE OF ALLEGIANCE

All stood for the Pledge of Allegiance.

IV. YOUTH COUNCIL

Youth Council was represented by Jackson Owen and Caleb Kane. The two students reviewed happenings at the school including time with Joann Semmer learning about Ostego Bay, cooking with the sun, Mound House visits, beach clean up for Earth Day, landscaping and tree planting on school grounds as well as working with the Pilot Club in the butterfly garden.

V. PROCLAMATIONS:

A. Water Conservation Month

Town Clerk Michelle Mayher read the proclamation with Mayor Kiker presenting the proclamation to Public Works Director Cathie Lewis.

VI. PUBLIC COMMENT
Public Comment Opened
No Public Comment
Public Comment Closed

VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Councilmember List recognized the Civic Association for the 50's Dance held to benefit Bay Oaks.

Councilmember Babcock echoed Councilmember List's thanks to the Civic Association and noted the Island's recognition of their rain barrels at the Southwest Florida Regional Planning Meeting.

VIII. ADVISORY COMMITTEES ITEMS AND REPORTS

A. Bay Oaks Advisory Committee Sign and Banner Request

Representatives from the Bay Oaks Advisory Committee, Tom Mizwa and Nicole Olsen, provided a power point presentation with a sign and banner request for consideration by Council.

There was consensus within the Council for the Committee to move forward by obtaining estimates for the signs and banners, checking with Community Development for any restrictions and returning before Council with the acquired information.

IX. MINUTES ADOPTION:

A. Approval of Minutes: March 15, 2010

B. Approval of Minutes: March 24, 2010 Work Session

MOTION: Councilmember Babcock moved for approval of minutes with a second by Councilmember List.

VOTE: Motion passed 5 to 0

X. CONSENT AGENDA:

A. Pension Plan Amendment

Councilmember Mandel questioned the need for information as noted on the first page of the VALIC paperwork, wanting to make sure everything was ok with the plan.

Town Manager Stewart indicated he had looked it over, stating the changes were necessary to meet Federal law, particularly addressing the Final 415 Regulations Amendment, stating he would have all necessary information sent by the 30th of April with Council's approval.

MOTION: Vice Mayor Raymond made a motion to update and authorize

necessary changes to the Town's pension plan with a second by Councilmember List.

VOTE: Motion passed 5 to 0

XI. PUBLIC HEARINGS:

A. Ordinance 10-02, Small Scale Comp Plan Amendments

Mayor Kiker opened the Hearing for Ordinance 10-02 at 6:55 p.m.

Attorney Dalton read the Ordinance: **“ORDINANCE #10-02 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING FOR A SMALL SCALE AMENDMENT TO THE COMP PLAN OF THE TOWN OF FORT MYERS BEACH TO RECLASSIFY CERTAIN PROPERTY FROM MIXED RESIDENTIAL CATEGORY TO THE PEDESTRIAN COMMERCIAL CATEGORY ON THE FUTURE LAND USE MAP, PROVIDING FOR CONFLICTS, SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.”**

Dr. Shockey on behalf of staff indicated what was before Council was a privately initiated request for a small scale Comprehensive Plan Amendment to the future land use map and the Town's Comprehensive Plan. The properties in question being 821 and 831 Estero Boulevard were requested to be changed from the Mixed Residential to the Pedestrian Commercial Category by the owners. Mr. Shockey indicated the term 'small scale' came from State law not a Town policy to divide different types of amendments up as to whether they are small scale or not. The point for this purpose was to be able to adopt a small scale amendment and submit it to the State when wished during the course of a year rather than together with other amendments that might be considered during the year.

Dr. Shockey noted for an amendment to be a small scale amendment there had to be a number of criteria met with the most important being that the amendment itself must involve a land area of less than 10 acres, this partial was approximately one third acre. Other criteria did not apply to this property per Dr. Shockey.

Dr. Shockey discussed the Mixed Residential category which the property was now and gave an overview and examples of Pedestrian Commercial which was the requested change. Dr. Shockey indicated there were two buildings on the property now that were built before flood regulations went into affect, noting the lowest levels were not elevated to the height which would be required now stating the reuse of the buildings would be limited as to the extent of remodeling that could be done without elevation and any new construction would be required by flood regulations today. Both properties were in Flood Zone VE, indicating anything below approximately 8 or 10 feet would need to be open to allow water to pass through during a flood, or enclosed with break away walls making

it usable for only parking, building access or storage.

Dr. Shockey stated an important policy to consider in the Comp Plan that directly addressed the issue was policy 4C10 which addressed changes to the Comprehensive Plan that would allow changes to the intensity or density. The matter of intensity could be greater in the Pedestrian Commercial category with policy 4C10 stating the proposed changes must be shown to be clearly in the public interest not just the private interest of the petitioning land owner. Mr. Shockey indicated that in accordance with the surrounding properties and their varied uses staff felt approving the amendment would be in the public interest.

Mike Roeder representing the two properties addressed Council regarding the change requested from Mixed Residential to Pedestrian Commercial, noting it was felt it was more in keeping with the use of the area in question. Mr. Roeder indicated the LPA had reviewed the amendment stating they too felt it was in the Town's best interest to adopt the change. Mr. Roeder also discussed the request for refund of application fees due to prior changes in the area, with prior Councils indicating no fee would be charged for a change in the properties' designation.

Rochelle Kay from the LPA reviewed the two part request, one being does the property meet the criteria for small scale amendment and second was the change in the best interest of the health and safety of the Town. Miss Kay indicated there was a consensus for small scale amendment with the majority feeling there would be a positive impact due to additional uses, likely to contribute to walk ability and positive pedestrian impact.

Public Comment Opened
No Public Comment
Public Comment Closed

Attorney Dalton reviewed the procedure for Council.

Councilmember Babcock asked the applicant when the property located at 821 Estero was purchased with the reply from Mr. Roeder being April 2, 2001 and 831 Estero purchased November 3, 1997. Councilmember Babcock then noted the Comp Plan was approved January 1, 1999 but the Future Land Use Map wasn't approved until February 2003 asking for confirmation from staff if those were the correct dates.

Dr. Shockey indicated the Comp Plan and Future Land Use Map both took effect the same time, January 1, 1999 but there was a time when the Town developed its own zoning code to address the future land use categories it had created so in 2003 all land in the Town was rezoned to new categories that matched up with the Future Land Use Map.

Councilmember Babcock asked if that was the same Land Use that existed today with Dr. Shockey stating there had been some changes due to all the rezoning that had taken place. Councilmember Babcock then reviewed Mr. Roeder's previous statement that the applicant had applied in 2003, with a hearing in 2004 and was rejected at the time. Councilmember Babcock inquired as to why the applicant waited so long in coming forward with the request again. Mr. Roeder indicated that previously additional properties to the rear of the Estero Boulevard properties had been included in the request and after the denial the owners were shocked with the decision as well as financially affected, so in the present request made the decision to concentrate on only the two properties fronting on Estero Boulevard. Councilmember Babcock noted that staff did not reference Ordinance 97-21 asking Dr. Shockey to explain what that covered. Dr. Shockey felt Councilmember Babcock was referencing the ordinance that amended the transitional Town Land Development Code which was the Lee County Code with certain amendments adopted by the Town Council over the years between incorporation and the Town's own complete replacement chapters. Mr. Shockey said it specified in the C1 zoning district new or expanded Commercial uses would have to pass through the land development process before acquiring a development order for development which was adding specificity to the zoning for the C1 district on Estero Island to clarify that the earlier policy from 1991 which was amended in 1992 was suppose to apply and prevent new commercial uses to be developed without passing through the planned development zoning process. Councilmember Babcock indicated that would apply to one property but not the other since one was purchased after the ordinance was put in place.

Councilmember Babcock continued by asking staff how this change would be in the public interest. Dr. Shockey indicated he did not feel the history of the properties played a major part in the public interest question in the view expressed by the applicant about the County's Comp Plan amendment in 1992. Mr. Shockey stated regardless of that issue the policies cited in the staff report regarding maintaining the small Town character of Fort Myers Beach in the pedestrian oriented public realm that allowed people to move around without their cars, providing shopping and services for residents and overnight guests that are to be preferred over shopping and services to additional day visitors, the neighborhood context of proposed commercial uses should be considered. Dr. Shockey stated this area consisted of residential, commercial and civic uses.

Councilmember Babcock asked what had changed from 2004 when staff's recommendation was to deny the request and now when staff's recommendation was to approve the request. Dr. Shockey indicated it was fair to say that a major issue was the additional properties had been removed from the request as well as the parcel now designated as parking. Councilmember Babcock asked Dr. Shockey if there had been any comments from the public with Dr. Shockey indicating he had not received any written or verbal comment. Mayor Kiker then asked if there had been a change of operating hours from 2 a.m.

until 12 p.m. Mr. Roeder stated there was no development proposal for the property and didn't think there were any discussion of that issue and that it would come up in the zoning.

Town Manager Stewart noted that there was no public comment at the LPA meeting, indicating that in all future hearings of this nature staff would include information on any public comment received, pro or con, indicating also it would be good for the LPA to include that information as well.

MOTION: Councilmember List moved to approve the Small Scale Amendment on April 19, 2010

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

Section 3.

- (1) The proposed amendment will likely have **POSITIVE** impact on affected traffic, utilities, other services, and future capital expenditures.

Section 4.

The Council hereby **GRANTS** applicants' request to amend the Town Comprehensive Plan Future Land Use Map as set forth on Exhibit A.

Vice Mayor Raymond seconded the motion.

VOTE: Town Clerk Michelle Mayher conducted a roll call on the motion to adopt Ordinance 10-02.

Councilmember List	Aye
Vice Mayor Raymond	Aye
Councilmember Babcock	Aye
Councilmember Mandel	Aye
Mayor Kiker	Aye

Motion passed 5 to 0

Mayor Kiker closed the hearing at 7:47 p.m.

B. Ordinance 10-06, Amending Chapters 6-11, 34-1744, and 34-1745
(Refuse Container and Fence Height/Location)

Mayor Kiker opened the hearing at 7:48 p.m.

Attorney Dalton read the Ordinance: **Town of Fort Myers Beach
ORDINANCE NO. 10-06 AN ORDINANCE AMENDING REGULATIONS
IN CHAPTER SIX AND THIRTY-FOUR OF THE TOWN OF FORT
MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING
AUTHORITY; ADOPTING AMENDMENTS TO ARTICLE I (PROPERTY
MAINTENANCE CODE) OF CHAPTER SIX WHICH IS ENTITLED
MAINTENANCE CODES, BUILDING CODES, AND COASTAL
REGULATIONS; ADOPTING AMENDMENTS TO DIVISION 17
(ENTITLED FENCES, WALLS AND ENTRANCE GATES) OF ARTICLE
IV (ENTITLED SUPPLEMENTAL REGULATIONS) OF CHAPTER 34
(ZONING DISTRICTS, DESIGN STANDARDS, AND
NONCONFORMITIES); PROVIDING FOR SEVERABILITY; AND
PROVIDING FOR AN EFFECTIVE DATE.**

Town Manager Stewart asked if Council wished to move the issue forward.

Rochelle Kay of the LPA indicated the subject came up following recommendations of an ad hoc committee who did considerable work for the safety, appearance and hygiene of the Town. Miss Kay reviewed the decisions of the LPA.

A decision was made to address at a later time the responsibility of property owners in making sure trash receptacles are placed on the curb and returned to the structure at the appropriate times if the property was rented.

Public Comment Opened

▪**Lee Melsek** chairman of the ad hoc committee indicated he joined the LPA in recommending approval. Mr. Melsek stated the ad hoc committee did not address rental agents indicating it was his understanding that Code Enforcement notified owners of the home. Mr. Melsek indicated the desire of the committee was to work to maintain a clean appealing place for residents and tourists.

Public Comment Closed

MOTION: Councilmember Babcock made a motion to move Ordinance 10-06, amending Chapters 6 and 34 of the Land Development Code, to a second hearing at the Town Council meeting of May 3, 2010 at 9 a.m. with a second by Councilmember List.

VOTE: Motion passed 5 to 0

Mayor Kiker closed the hearing at 8:01 p.m.

Mayor Kiker voiced his thanks from Council to Joanne Shamp and Rochelle Kay for their work on the LPA.

C. Ordinance 10-07, CIP Amendments

Mayor Kiker opened the Hearing at 8:02 p.m.

Attorney Dalton read the Ordinance: **ORDINANCE NO. 10-07 AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE COMPREHENSIVE PLAN OF THE TOWN OF FORT MYERS BEACH TO UPDATE THE CAPITAL IMPROVEMENT PLAN; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

Town Manager Stewart stated staff was asking Council to incorporate the current CIP into the Table 11-7 of the Comprehensive Plan's Capital Improvement Element as is required.

Public Comment Opened

No Public Comment

Public Comment Closed

MOTION: Councilmember List moved to adopt Ordinance 10-07 to incorporate the current CIP into Table 11-7 of the Comprehensive Plan's Capital Improvements Element with a second by Councilmember Mandel.

VOTE: A roll call vote was conducted by Town Clerk Michelle Mayher to the motion to adopt Ordinance 10-7.

Councilmember List	Aye
Councilmember Mandel	Aye
Mayor Kiker	Aye
Vice Mayor Raymond	Aye
Councilmember Babcock	Aye

Motion passed 5 to 0

Mayor Kiker closed the Hearing at 8:05 p.m.

XII. ADMINISTRATIVE AGENDA

A. Appointment to Advisory Committee(s)

Town Manager Stewart asked Council to consider the appointment to the LPA of Joseph Kosinski

Public Comment Opened

No Public Comment
Public Comment Closed

MOTION: Councilmember Babcock made a motion to approve Mr. Kosinski's appointment to the LPA with a second by Vice Mayor Raymond.

VOTE: Motion passed 5 to 0

B. Approval of Town Council Policies and Procedures

Mayor Kiker stated Council did not complete their discussions on Policies and Procedures at their earlier worksession so item B would not be addressed.

XIII. PUBLIC COMMENT

Public Comment Opened

▪ **Joseph Salvagio** questioned Council regarding the faulty dredging job in Laguna Shores.

Town Manager Stewart indicated the dredging job itself was not faulty as the company did the work as designed, and that it was the location that was faulty. Mr. Stewart stated Council would be bringing the issue to a workshop for discussion which would include the DEP. Mr. Stewart noted he hoped to schedule the meeting within the next 30 days depending on the success in contacting the DEP.

▪ **Mike Roeder** addressed Council by again asking Council to consider the application fee waiver.

Town Manager Stewart indicated he would recommend that Council not wave the fees as there was work done by staff previously as was contemplated for the charges in the first place, there was work done this time around by staff which was successful so a waiver of fees would not be recommended.

Councilmember List indicated she had read volumes of material regarding the case, feeling one of the citizens had expended a lot of money to get it accomplished and asked Council to look at the figures and give it some consideration.

Mayor Kiker asked Attorney Dalton if there were things Council needed to consider regarding the issue. Attorney Dalton indicated it had not be noted for discussion so should be addressed at another time.

Councilmember Babcock indicated he supported the decision of the Town Manager and felt it would be wrong of Council to set this precedent. Councilmember Babcock noted there was certainly cost to the applicant but there was also cost to the staff as well stating as far as he was concerned the issue should be closed.

Public Comment Closed

XIV. TOWN MANAGER'S ITEMS

Town Manager Stewart thanked Council for the opportunity to attend the Tax and Finance Seminar hosted by Nabors, Giblin.

Mr. Stewart indicated he had a follow up conversation with the landlord representing the Town Hall building, stating the Town needed to have a statement to them by the end of the month regarding what the Town intended to do as far as remaining in the building.

XV. TOWN ATTORNEY'S ITEMS

Attorney Dalton echoed Mr. Stewart's comments on the Seminar indicating it was an excellent workshop.

Attorney Dalton indicated April 4th marked her 5th anniversary with the Town and noted her submitted resignation letter was for April 12th, stating representing the Town had been a very joyful and challenging experience while at the same time making her a better attorney. Attorney Dalton stated she was leaving to pursue community service in other areas with her intention to do affordable end of life legal issues for folks who don't have a lot of money. Attorney Dalton stated she would give the Town the necessary time to do what they needed to do to acquire a new Town Attorney.

Mayor Kiker expressed Council's thanks for the work Attorney Dalton had done.

Councilmember Mandel volunteered to be the liaison in searching for a new Town Attorney.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Councilmember Mandel also felt the Tax and Finance Seminar was very good. Councilmember noted his report on a meeting with Dr. Beazer of Charlotte Harbor. Councilmember Mandel then asked for Attorney Dalton to bring an opinion back to the April 21st meeting regarding his question, if the Water Utility borrowed funds but did not have the full faith and credit of the Town or any Town involvement in the negotiation would the Corporation be able to borrow for any length of time. Councilmember Mandel then addressed Town Manger Stewart's comments regarding negotiations on the building by asking if they needed plans if there was no resolution on the current site on an interim basis as well as the need to ask an architect if it would be feasible to put two or three floors on top of Bay Oaks for Town Council since that would not take any property off the tax rolls and it might improve safety and activity at Bay Oaks.

Vice Mayor Raymond agreed with Councilmember Mandel concerning the

possibility of utilizing the Bay Oaks property.

Councilmember List felt it would be prudent to gather information on the different options Council would need to consider.

Town Manager Stewart indicated it was a process that was already in the works.

Councilmember List thanked Attorney Dalton for all her assistance, and informed everyone of the Horizon Council Meeting.

Vice Mayor Raymond commented on the Tax Seminar as well as voicing his thanks to Attorney Dalton.

Councilmember Babcock voiced his pleasure in working with Attorney Dalton, thanking her for her hard work and ethics.

Mayor Kiker thanked Attorney Dalton then asked Council for their consensus on setting up worksessions with the County Commissioners.

XVII. AGENDA MANAGEMENT

Mr. Stewart indicated there was a meeting scheduled for the 5th of May to discuss the Mound House.

April 21st will be a session on the Water Utility.

Town Manager Stewart noted staff had provided Council with specific dates when final decisions needed to be made for the budget asking Council when they wanted to start having budget meetings.

Councilmember Babcock indicated his desire to finish Policies and Procedures.

XVIII. RECAP OF ACTION ITEMS

- Staff will work with BORC for assistance in signs and banners
- Address Councilmember Mandel's concerns on the Pension Issue in paragraph 4
- Move forward 10-06 for the 3rd of May
- Town Manager to work together on Ordinance 10-02 and 10-07
- Notify Mr. Kosinski on Council's approval to his membership on LPA
- Councilmember Mandel designated to work with staff on gathering information on locating a new Town Attorney as well as assistance from Attorney Dalton
- Town Hall Issue, provide additional information to Council
- Work with Mayor Kiker to set up co-meetings with County Commissioners
- Prepare a memorandum regarding the participation of Mr. Spikowski

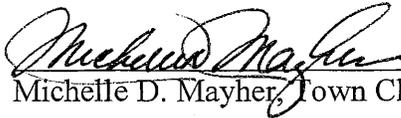
XIX. ADJOURNMENT

MOTION: Councilmember List made a motion to adjourn with a second by Councilmember Mandel.

Meeting adjourned at 9:18 p.m.

Adopted 5-17-10 With ~~Without~~ changes. Motion by Mandel/List

Vote: 5-0



Michelle D. Mayher, Town Clerk

- End of document.

(EXHIBIT E)

ORDINANCE NO. 10-02

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

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

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

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

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

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

WHEREAS, in accordance with the requirement that the Town Local Planning Agency (LPA) is required to review all proposed amendments to the Comp Plan, the LPA on March 23, 2010, at a duly noticed meeting, conducted a hearing on this ordinance and provided the Town Council with its comments via LPA Resolution 2010-03 which was reviewed by the Town Council at hearing; and

WHEREAS, in accordance with the requirements of the Town Charter, the Land Development Code, the Comp Plan, and Florida statute, this ordinance was introduced before Town Council on April 5, 2010 and the Town Council conducted a duly noticed hearing on this ordinance on April 19, 2010, at which time the Town Council considered the documents in the file, the testimony of all interested persons, the application, the LPA resolution and all other relevant matters; and

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

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

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

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

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

SECTION 3. FINDING OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER THIS. The Town Council finds that the proposed FLUM amendment **IS** clearly in the best interest of the health, safety and welfare of the Town's residents, businesspersons and property owners and such change **IS** necessary to provide for orderly future growth of the community, for the following reasons:

The proposed amendment will likely have **POSITIVE** impact on affected traffic, utilities, other services, and future capital expenditures

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

SECTION 5. DIRECTION TO TOWN MANAGER. The Town Manager is hereby directed to send copies of the public notice for the Council hearing as well as a copy of the amendment as soon as possible following said hearing to the state land planning agency, the regional planning council and any other person or entity requesting a copy. This information shall also include a statement identifying any property subject to the amendment that is located within a coastal high-hazard area as identified in the local comprehensive plan and shall otherwise comply in all respects to the requirements of

Section 163.3187, Florida Statutes. Upon the Ordinance becoming effective as provided in Section 6 below, the Town Manager is directed to take all actions necessary to codify this amendment into the Comprehensive Plan Future Land Use Map.

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

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

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

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

Larry Kiker, Mayor
Tom Babcock
Alan Mandel

aye
aye
aye

Bob Raymond, Vice Mayor
Jo List

aye
aye

DULY PASSED AND ENACTED this 19th day of April, 2010.

ATTEST:


Michelle D. Mayher, Town Clerk

TOWN OF FORT MYERS BEACH

BY:


Larry Kiker, Mayor

Approved as to legal form by:

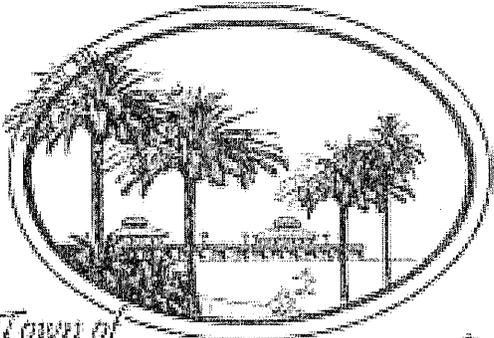

Anne Dalton, Esquire
Town Attorney

Ordinance 10-02

821 Estero Boulevard

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

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



*Town of
Fort Myers Beach*

Exhibit A

Ordinance 10-02

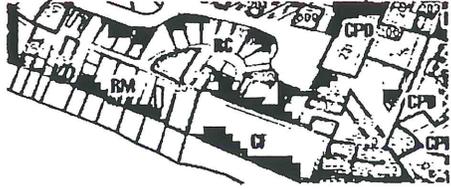
831 Estero Boulevard

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

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



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: PURTELL / PAINE
Authorized Applicant: Mike Roeder
LeePA STRAP Number(s): 24-46-23-W3-0050B.0050
24-46-23-W3-0050B.0070

Current Property Status: Seasonal rentals
Current Zoning: RC
Future Land Use Map (FLUM) Category: Pedestrian commercial
Platted Overlay? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no FLUM Density Range:

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input checked="" 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): Mike Roeder			
Address:		Street: 1625 Hendry Street, Suite 301	
City: Fort Myers		State: FL	Zip Code: 33901
Phone: 239-334-2722			
Fax: 239-334-1446			
E-mail address: MRoeder@knott-law.com			

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

<input type="checkbox"/> Owner (indicate form of ownership below)	
<input checked="" type="checkbox"/> Individual (or husband/wife)	<input type="checkbox"/> Partnership
<input type="checkbox"/> Land Trust	<input type="checkbox"/> Association
<input type="checkbox"/> Corporation	<input type="checkbox"/> Condominium
<input type="checkbox"/> Subdivision	<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: Knott Consoer Ebelini Hart & Swett, P.A.	
Mailing address: Street: 1625 Hendry Street, Suite 301	
City: Fort Myers	State: FL Zip Code: 33901
Contact Person: Mike Roeder	
Phone: 239-334-2711	Fax: 239-334-1446
E-mail address: MRoeder@knott-law.com	

D. Other agents:

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

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

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input checked="" type="checkbox"/> Conventional Rezoning from RC to: DOWNTOWN
<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

PART IV – Property Ownership

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

<input checked="" 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name: ISLAND SHORES, UNIT 2
Plat Book Number: 9 Page: 25 Unit: 2 Block: Lot: 5,6,7,8
If no: _____ and part of 9, 13 and 14
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code, as Exhibit 5-2. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida.
--

C. STRAP Number(s):

24-46-23-W3-0050B.0050 and 24-46-23-W3-00500B.0070
--

D Property Dimensions:

Area: 14,440	square feet	.33	acres
Width along roadway: 110	feet	Depth: 149	feet

E. Property Street Address:

821 and 831 Estero Boulevard

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

From Sky Bridge, turn left onto Estero Blvd., go 2 blocks, property on the right.
Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

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

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

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input checked="" type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

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

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input checked="" type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

PART VI – Affidavit

Application Signed by Individual Owner or Authorized Applicant

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

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

Michael Roeder

Signature

Michael Roeder

Typed or Printed Name

State of FLORIDA

County of LEE

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

before me this 20th of July by Michael Roeder
(date) (name of person under oath or affirmation)

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

as identification.

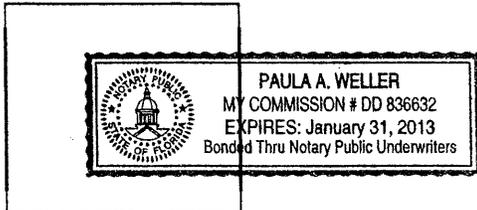
Paula A. Weller

Signature of person administering oath

Paula A. Weller

Typed or Printed Name

SEAL:



**EXHIBIT 4-1
 DISCLOSURE OF INTEREST FORM**

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

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

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage
Fred Paine	100%
821 Estero Boulevard, Fort Myers Beach, FL	
James Purtell	67%
Patrick Purtell	33%
831 Estero Boulevard, Fort Myers Beach, FL	

2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage

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

Name and Address

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application but prior to the date of final public hearing, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature Michael Roeder
 Applicant
MICHAEL ROEDER
 Printed or typed name of applicant

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 20th day of JULY, 20 , by MICHAEL ROEDER, who is personally known to me or who has produced _____ as identification and who did (or did not) take an oath.

Paula A. Weller
 Signature of Notary

Paula A. Weller
 Typed or Printed Name of Notary

SEAL:

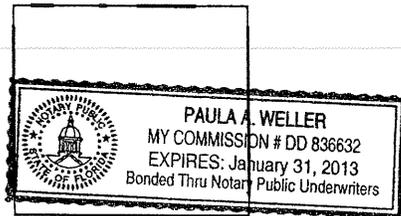
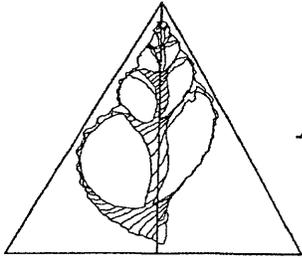


Exhibit 4-2

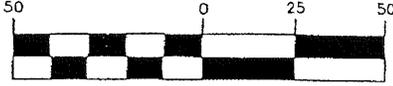
List of Property Owners

Fred Paine
821 Estero Boulevard
Fort Myers Beach, FL 33931

James Purtell and Patrick Purtell
831 Estero Boulevard
Fort Myers Beach, FL 33931

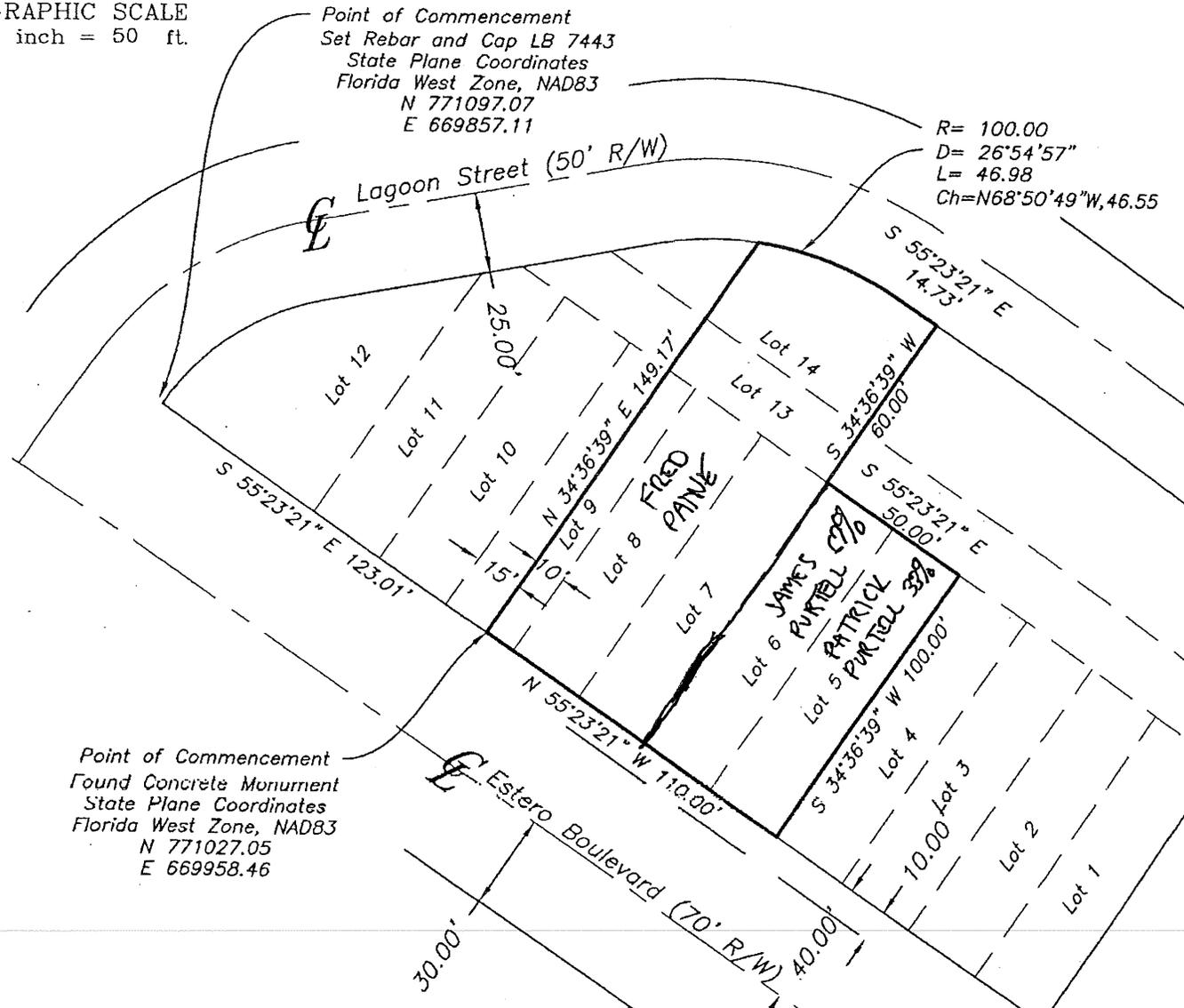


North

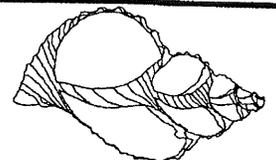


GRAPHIC SCALE
1 inch = 50 ft.

*Sketch to Accompany Description of
Lots 5,6,7,8 and part of Lots 9,13 and 14
Block B
Unit No. 2 Island Shores Subdivision
Town of Fort Myers Beach,
Lee County Florida*



Job No. 04082



SANIBEL SURVEYS
2410 Palm Ridge Road
Sanibel Florida 33957
472-0095
sanibelsurveys@gmail.com
Licensed Business No. 7443

EXHIBIT
5-1

*Description to accompany Sketch of
Lots 5,6,7,8 and part of Lots 9,13 and 14
Block B*

*Unit No. 2 Island Shores Subdivision
Town of Fort Myers Beach,
Lee County Florida*

Legal Description of Lots 5, 6, 7, 8 and part of Lots 9, 13 and 14, Block B, Unit No. 2 Island Shores Subdivision, public records of Lee County Florida, in Plat Book 9, Page 25, being more particularly described as follows:

Commencing at the Southwesterly corner of Lot 12, Block B, Unit No. 2, Island Shore Subdivision;

Thence, S 55°23'21" E, 123.01 feet along the Northerly Right of Way of Estero Boulevard, to the Point of Beginning;

Thence, N 34°36'39" E, 149.17 feet to the Southerly Right of Way of Lagoon Street (50' Wide) and a point on a curve concave to the Southwest;

Thence, 46.98' along a curve having the following parameters, A Radius of 100.00', Interior Angle of 26°54'57" and a Chord Bearing of S 68°50'49" E, 46.55' to a point of tangency;

Thence, S 55°23'21" E, 14.73 feet along said Southerly Right of Way to the extension of the easterly line of Lot 7;

Thence, S 34°36'39" W, 60.00 feet along said extension line to the northeasterly corner of said Lot 7;

Thence, S 55°23'21" E, 50.00 feet along the northerly line of Lots 6 and 5 to the northeasterly corner of said Lot 5;

Thence, S 34°36'39" W, 100.00 feet along the easterly line of said Lot 5 to the Northerly Right of Way of Estero Boulevard (70' Wide);

Thence, N 55°23'21" W, 110.00 feet along the Northerly Right of Way of Estero Boulevard, to the Point of Beginning.

Said Parcel contains 14,440 square feet or .33 acres, more or less.

Survey notes:

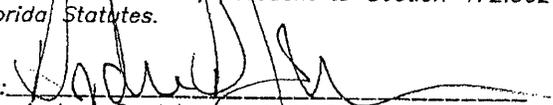
1. Measurements shown are in feet and decimals thereof.
2. Subject to easements and restrictions of record.
3. Underground structures and utilities, if any, are not included.
4. Reproductions of this drawing are void unless sealed with signers embossed surveyor's seal.
5. This sketch to accompany description was prepared based on a boundary survey completed by this firm in June of 2011 and record documents.
6. See Boundary Survey for location of improvements.
7. Additions to or deletions from survey or reports by other than the signing surveyor and mapper are prohibited by law without the express written consent of the signing surveyor and mapper.
Copyright 2011, Andrew D. Johnson, PSM, all rights reserved.
Do not copy without the written consent of Andrew D. Johnson, PSM
8. This survey was prepared only for the clients as named hereon and no third or other party certification is expressed or implied.

Sheet 1 of 2

See Sheet 2 of 2 for Sketch

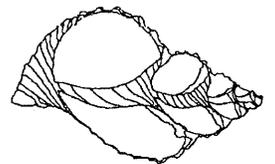
Valid only with embossed seal

I hereby certify that this survey was made under my responsible charge and meets the minimum technical standards as set forth by the Florida Board of Professional Land Surveyors in Chapter 5J-17.051 of the Florida Administrative Code, pursuant to Section 472.0027 of the Florida Statutes.

By: 
Andrew D. Johnson, PSM 6256
Not Valid Without Signature and Raised Seal

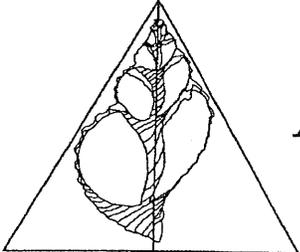
Date Signed: _____

Job No. 04-082

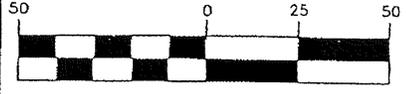


SANIBEL SURVEYS
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472-0095
sanibelsurveys@gmail.com
Licensed Business No. 7443

*Sketch to Accompany Description of
 Lots 5,6,7,8 and part of Lots 9,13 and 14
 Block B
 Unit No. 2 Island Shores Subdivision
 Town of Fort Myers Beach,
 Lee County Florida*



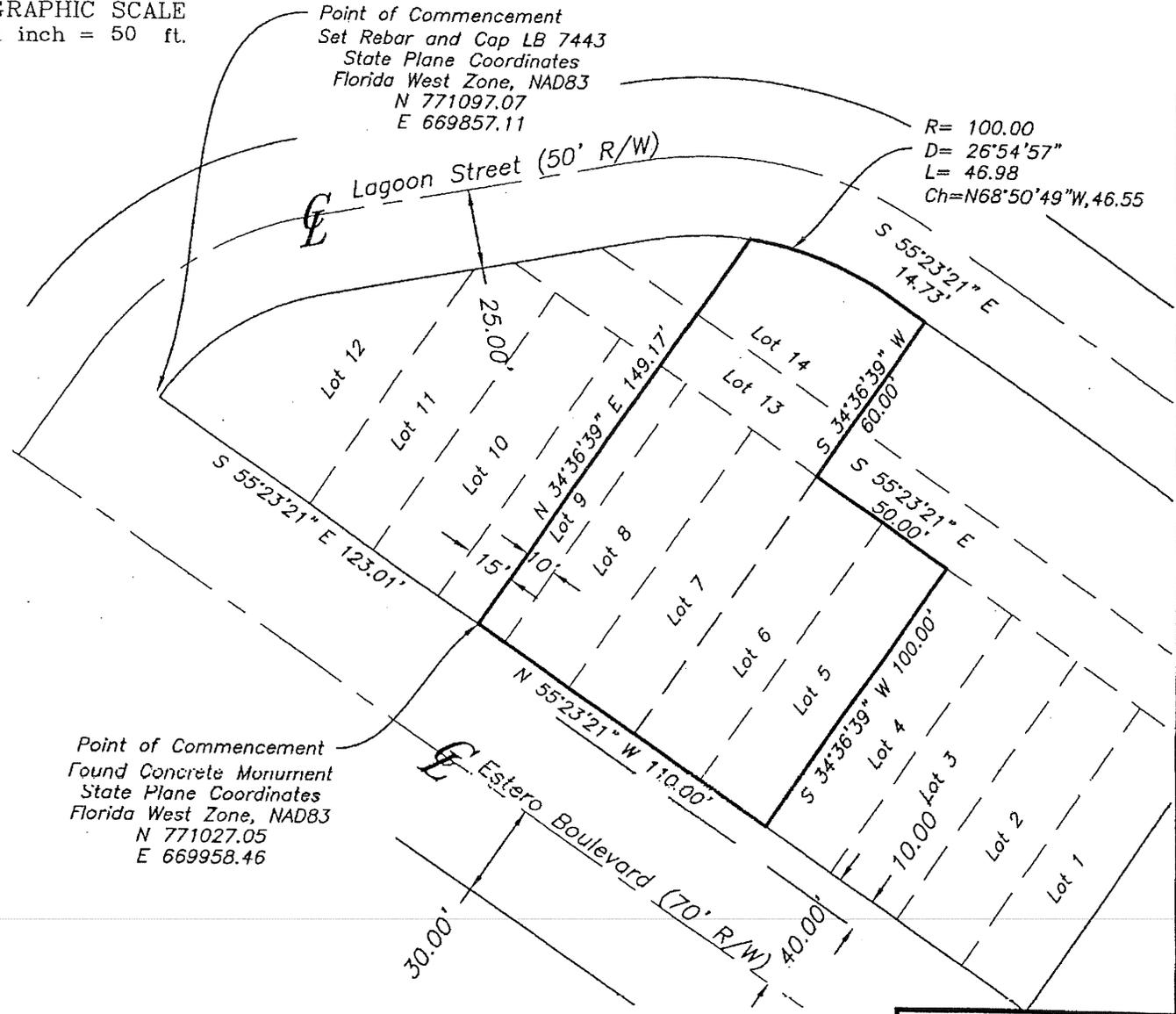
North



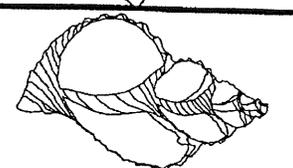
GRAPHIC SCALE
 1 inch = 50 ft.

Point of Commencement
 Set Rebar and Cap LB 7443
 State Plane Coordinates
 Florida West Zone, NAD83
 N 771097.07
 E 669857.11

R= 100.00
 D= 26°54'57"
 L= 46.98
 Ch=N68°50'49"W, 46.55

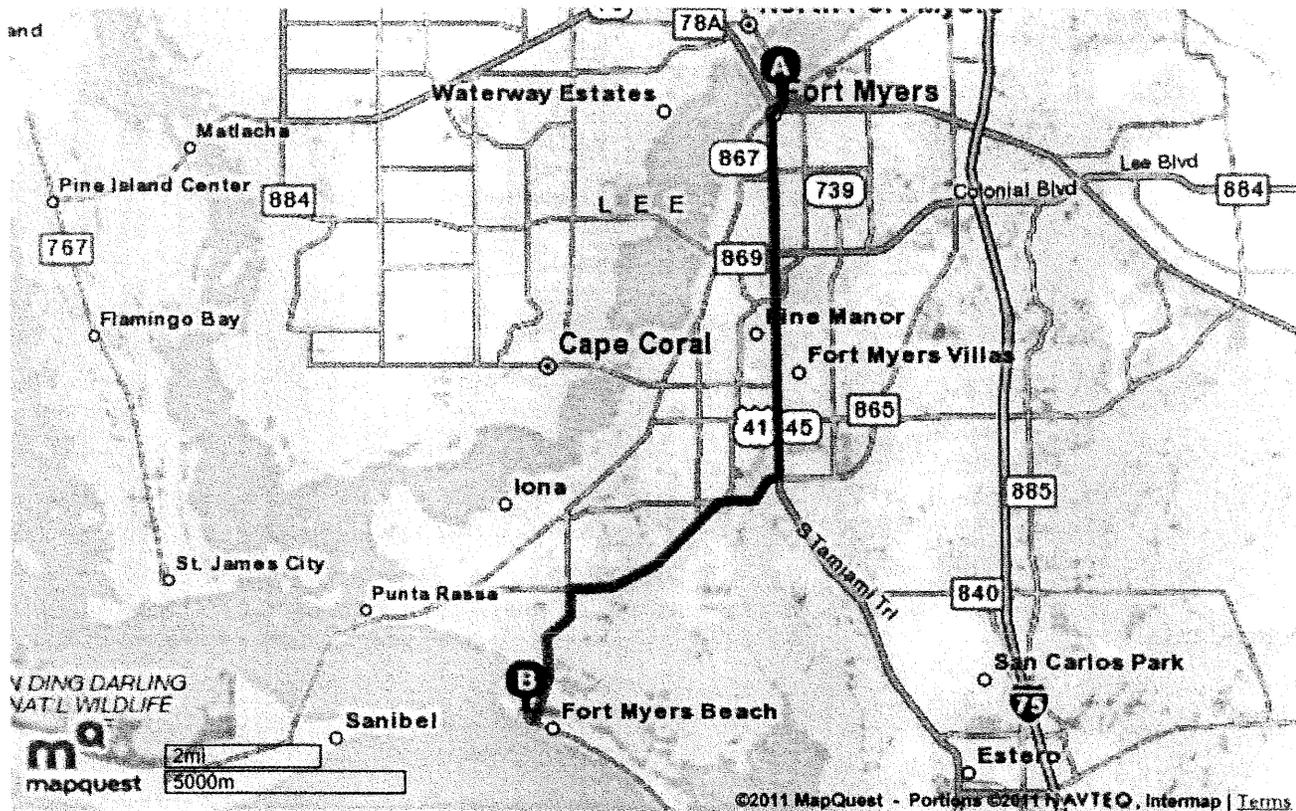


Job No. 04082



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 472-0095
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Sheet 2 of 2
 See Sheet 1 of 2 for Description

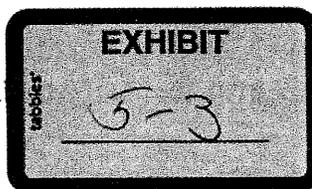


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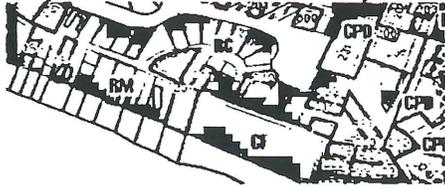
caf

7/20/2011

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-C

**Additional Required Information for a
Conventional Rezoning Application**

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

Case Number:
Project Name: PURTELL / PAINE
Authorized Applicant: Mike Roeder
LeePA STRAP Number: 24-46-23-W3-0050B-0050 and 24-46-23-0050B.0070

Current Property Status: Seasonal rentals
Current Zoning: RC
Future Land Use Map (FLUM) Category: PED. COMMERCIAL
Comp Plan Density: _____ Platted Overlay? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Conventional rezoning:

From RC _____ (current zoning)
to DOWNTON _____ (requested zoning)

Any additional simultaneous zoning actions can be requested using the same Application for Public Hearing form, but must include all parts of the required supplemental forms and documentation, and include the fees for each request.

Paine/Purtell Narrative Statement

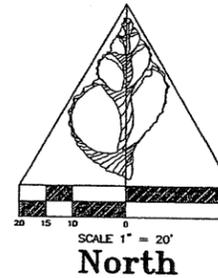
This is a request to rezone two properties located at 821 and 831 Estero Blvd. from RC (Residential Conservation) to Downtown. These two properties front Estero Blvd. almost directly across the street from Lynn Hall Park. In addition, they are located between the 7-11 convenience store on the south which is zoned Downtown Commercial and another parcel owned by Fred Paine on the north which is zoned CPD for a commercial parking lot. When Jim Purtell and Fred Paine purchased these properties over ten years ago, they were both zoned C-1 (Commercial) under the carry-over County zoning designation.

Recognizing these facts, the Town Council last year (2010) approved a land use designation change from Mixed Residential to Pedestrian Commercial to allow for more appropriate use of this property on the edge of Times Square. So the primary rationale for this request is to align the zoning with the new land use designation. Residential Conservation (RC) is not an appropriate zoning category for the Pedestrian Commercial land use category.

The Downtown zoning district is identified, described and regulated by Section 34-671 through 678 of the Land Development Code. It is clear from the map provided that these two properties are located on the current boundary of the Downtown district and the expansion of that district to include them would be a logical change.

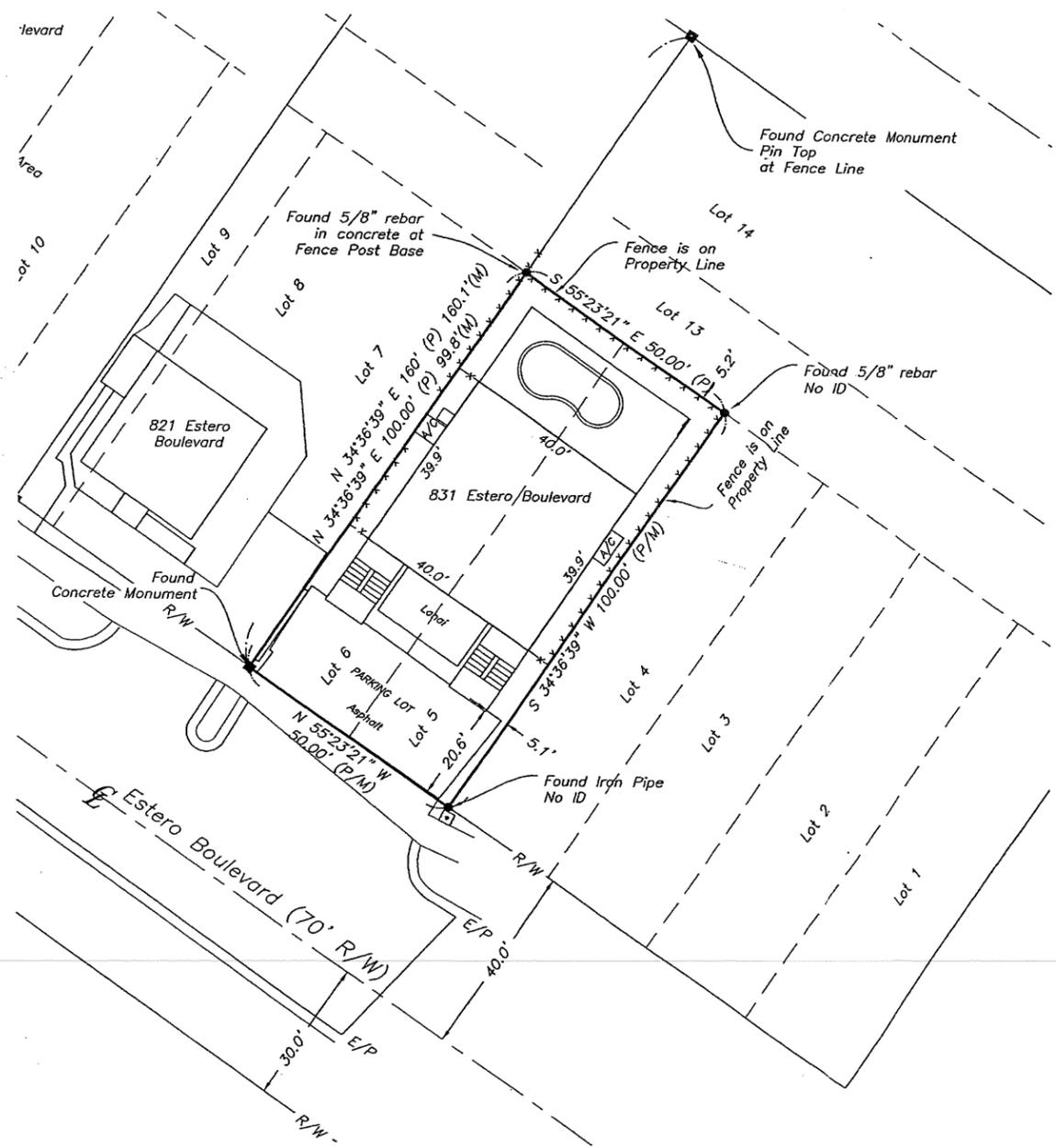
More importantly, the change would be supported by the same policies in the Comprehensive Plan that were cited by the Council in their approval of the land use change from Mixed Residential to Pedestrian Commercial, namely Goal 4, Objective 4-A, Policy 4-A-1, Policy 4-A-2 and Policy 4-A-4. In brief, this property is too strategically located not to be included in the pedestrian oriented Downtown centered on Times Square, the most distinctive feature of Ft. Myers Beach. The Plan encourages pedestrian oriented development wherever feasible, and these two lots are ideally located to add the pedestrian-oriented realm of the Times Square neighborhood.

The proposed change will not cause hazard or nuisance to persons or property, nor will it harm any environmental or natural resources. Urban services are available and adequate to serve the properties, and they are served by transportation facilities with adequate capacity.



Boundary Survey of:
831 Estero Boulevard
 Lots 5 and 6, Block B,
 Island Shores, Unit 2

(Plat Book 9, Page 25)
 Section 24, Township 46 South, Range 23 East
 Town of Fort Myers Beach, Lee County, Florida



Legal Description:

Lots 5 and 6, Block B of Island Shores, Unit No. 2, according to the map or plat thereof on file and recorded in the office of the clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 25.

<p>SURVEY NOTES:</p> <ol style="list-style-type: none"> MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED. REPRODUCTIONS OF THIS DRAWING ARE VOID UNLESS SEALED WITH SIGNER'S EMBOSSED SURVEYOR'S SEAL. THIS PROPERTY IS LOCATED IN A SPECIAL FLOOD HAZARD AREA ON THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD INSURANCE RATE MAPS. <p>NATIONAL FLOOD INSURANCE INFORMATION: COMMUNITY NUMBER 120 673 PANEL NUMBER 0554 SUFFIX F EFFECTIVE DATE 08/28/2008 FIRM ZONE VE BASE FLOOD ELEVATION +15' NAVD 88</p> <ol style="list-style-type: none"> BEARINGS ARE BASED ON THE RIGHT OF WAY OF ESTERO BOULEVARD, AS MONUMENTED IN THE FIELD, BEING N 55°23'21\"/> <p>7. DATE OF LAST FIELD WORK : 6/6/2011</p> <ol style="list-style-type: none"> THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT BENEFIT OF AN UP TO DATE TITLE COMMITMENT. ADDITIONS TO OR DELETIONS FROM SURVEY OR REPORTS BY OTHER THAN THE SIGNING SURVEYOR AND MAPPER ARE PROHIBITED BY LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SIGNING SURVEYOR AND MAPPER. COPYRIGHT 2011, ANDREW D. JOHNSON, PSM, ALL RIGHTS RESERVED. DO NOT COPY WITHOUT THE WRITTEN CONSENT OF ANDREW D. JOHNSON, PSM. THIS SURVEY WAS PREPARED ONLY FOR THE CLIENTS AS NAMED HEREON AND NO THIRD OR OTHER PARTY CERTIFICATION IS EXPRESSED OR IMPLIED. 		<p>ABBREVIATIONS:</p> <p>D = PER DEED P = PER PLAT M = AS MEASURED E/P = EDGE OF PAVEMENT A/C = AIR CONDITIONER OHW = OVERHEAD WIRES UE = UTILITY EASEMENT PUE = PUBLIC UTILITY EASEMENT DE = DRAINAGE EASEMENT R/W = RIGHT-OF-WAY C = CENTERLINE OR = OFFICIAL RECORDS BOOK PG = PAGE CONC = CONCRETE</p> <p>SYMBOL KEY:</p> <ul style="list-style-type: none"> ● = MONUMENT AS NOTED ■ = CONCRETE MONUMENT △ = NAIL AND DISK WM = WATER METER WV = WATER VALVE ⊕ = FIRE HYDRANT ⊞ = CATCH BASIN □ = CONCRETE POWER POLE ⊙ = WOOD POWER POLE ⊖ = GUY ANCHOR ☼ = LAMP ⊗ = STORM SEWER MANHOLE ⊕ = SANITARY SEWER MANHOLE ⊙ = SEWER CLEAN OUT ⊞ = TELEPHONE PEDESTAL ⊙ = CABLE TELEVISION PEDESTAL ⊕ = 240 VOLT ELECTRIC SERVICE ⊙ = BENCHMARK 								
<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>REVISIONS</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	REVISIONS	DATE							<p>Certified to: James Purtell Patrick Purtell</p>	
REVISIONS	DATE									
<p>SANIBEL SURVEYS 2410 Palm Ridge Road Sanibel Florida 33957 472-0095 sanibelsurveys@gmail.com Licensed Business No. 7443</p>	<p>JOB #04082-831</p>	<p>I hereby certify that this survey was made under my responsible charge and meets the minimum technical standards as set forth by the Florida Board of Professional Land Surveyors in Chapter 5J-17.051 of the Florida Administrative Code pursuant to Section 472.0027 of the Florida Statutes.</p> <p>By: <i>Andrew D. Johnson</i> Andrew D. Johnson, PSM 6256 Not Valid Without Signature and Raised Seal</p> <p>Date Signed: <i>7/2/11</i></p>								



Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

November 2, 2011

Mike Roeder
Knott Consoler Ebelini Hart & Swett, P.A.
1625 Hendry Street Suite 301
Fort Myers, FL 33901

Re: Purtell/Paine Rezoning, FMBREZ2011-0001

Dear: Mr. Roeder,

The Community Development Department has reviewed the information provided for the above zoning application. The Town of Fort Myers Beach Land Development Code (LDC) required additional information for the application to be found sufficient. Please respond to each requirement not satisfied on the attached sufficiency checklists.

If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the LDC requires that this application be considered withdrawn. Please feel free to contact me if you have any questions or require further clarification.

Sincerely,

Leslee Chapman
Zoning Coordinator
Town of Fort Myers Beach
Community Development

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

ZONING REVIEW – Leslee Chapman

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Application for Public Hearing, Part V – Property Information Section F General Location.

The directions to the subject property appear to be incorrect. Please amend the application with the correct directions.

Application for Public Hearing Supplement PH-C

Please provide the future land use map category on page one of three.

Section 34-85(2)(g) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Please provide additional information as to how the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Section 34-85(2)(h) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Please provide additional information as to how the request meets or exceeds all performance and locational standards set forth for the proposed use.

Section 34-85(2)(k) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Please provide additional information as to how the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Leslee Chapman
Zoning Coordinator
239-765-0202 ext 105

BUILDING SAFETY REVIEW – Ken Miller

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

The proposed re-zoning does not propose any new structures or changes to any existing structures; therefore there are no comments at this point.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Ken Miller
Building Safety Services Coordinator
239-765-0202 ext 113

FLOODPLAIN REVIEW – Ken Miller

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

The proposed re-zoning does not propose any new structures or changes to any existing structures; therefore there are no comments at this point.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Ken Miller
Building Safety Services Coordinator
239-765-0202 ext 113

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

ENVIRONMENTAL SCIENCES REVIEW – Keith Laakkonen

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Section 34-85(2)(j) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Please provide additional information and justification that indicates that environmentally critical areas and/or natural resources will not be impacted.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Keith Laakkonen

Environmental Sciences Coordinator

239-765-0202 ext 136

PUBLIC WORKS REVIEW – Cathie Lewis

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

The subject application has no initial impact related to Public Works. Should the properties be redeveloped under the Downtown zoning provisions there will be significant impacts that will require a thorough review by Public Works.

Stormwater Management is an issue that will need to be addressed and could be a condition of the rezoning process. Currently there is no stormwater management infrastructure installed on Lagoon Road. The stormwater system along Estero Boulevard is not permitted to handle the flows from the existing private properties or increased density from the same.

Section 34-85(2)(i) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Please provide additional information and justification that indicates that urban services are, or will be, available and adequate to serve the proposed land use change.

Section 34-85(2)(l) Whether the location of the request places an 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 development

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

Please provide additional information and justification that indicates that the location of the request does not put an undue burden upon existing transportation or other services and facilities and that the requested rezoning will be served by streets with the capacity to carry traffic generated by the development.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Cathie Lewis

Public Works Director

239-765-0202 ext 138

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+ Board Certified Business Litigation Lawyer
◇ Board Certified Construction Lawyer

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December 5, 2011

**TOWN OF
FORT MYERS BEACH**

DEC 05 2011

RECEIVED BY

Ms. Leslee Chapman, Zoning Coordinator
Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

RE: Purtell/Paine Rezoning, FMBREZ 2011-0001

Dear Leslee:

Attached please find additional information in response to your sufficiency letter dated November 2, 2011. I have attached corrected sheets from the application to respond to the first two comments in your letter regarding the directions to the property and the proper land use category (Attachment 1). In addition, I am submitting an expanded narrative statement that responds to the other questions in the letter relating to the consistency with the Comp. Plan, performance and location standards, compatibility and availability of urban services (Attachment 2). Since this is a request for conventional zoning, some of these questions are difficult to answer until a specific development proposal is submitted. Until that time, there is a range of possible uses with different impacts. However, it is very likely that the existing structures would be utilized given the constraints of the flood insurance program. In that event, the extent of development will be limited.

In addition, I am submitting the original narrative statement from the previous land use plan amendment request, which provides more detail on the history of the property (Attachment 3). When the Town Council invited the land owners who had lost their commercial zoning in 2003 to submit a small scale plan amendment to remedy the situation, Fred Paine and Jim Purtell obtained the permission of all of the land owners along Lagoon Drive and Estero Blvd. to submit a joint plan amendment application to the Pedestrian Commercial land use category. At that time, it was made clear to the staff that the intention was that the properties fronting Estero Blvd. would request zoning to the Downtown category, while the properties in the rear fronting Lagoon would be requesting a rezoning to Professional Office. We thought this was the best way to respond to the predictable concern that commercial zoning in the "front" would possibly be incompatible with the properties to the rear fronting Lagoon Drive.

We believed that if everyone expressed their interest in converting to the Pedestrian Commercial land use category and some future commercial zoning category, that would demonstrate to the staff and Council that the neighborhood was in agreement and supportive of the change. However, by the time this request

Ms. Leslee Chapman, Zoning Coordinator
Page 2
December 5, 2011

reached the Council, the membership had changed and it appeared that submitting this many properties as a group was too large a request for the council to accept. That request was denied on a 2 to 2 vote, and the subsequent rezoning was delayed until the small scale amendment was finally approved last year for just the two Paine/Purtell properties fronting Estero Blvd.

The ultimate rationale for this request is that when both of these owners purchased their property over 10 years ago, they were zoned C-1, which was a carryover County zoning designation, and this zoning was very similar to what the Downtown zoning would now allow. In reality, Mr. Paine and Mr. Purtell are simply trying to regain the potential uses of the property that they thought were available when they purchased the property. In addition to that, the location between a convenience store and a commercial parking lot, and across from the public beach, certainly lends itself to this type of pedestrian oriented commercial zoning.

Please let me know if you have any additional questions about this application or require more information.

Very truly yours,

KNOTT EBELINI HART



Michael E. Roeder, AICP
Director of Zoning and
Land Use Planning
MER:kab
cc: Jim Purtell
Fred Paine

ATTACHMENT 1

Case # _____
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

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

Take San Carlos Blvd. over Sky Bridge, turn right onto 5th Street, turns into Estero Blvd. and go two blocks, property is on the right.
Attach Area Location Map as Exhibit 5-3

G. Property Restrictions (check applicable):

<input checked="" type="checkbox"/> There are no deed restrictions or covenants on this property that affect this request.
<input type="checkbox"/> Restrictions and/or covenants are attached as Exhibit 5-4
<input type="checkbox"/> A narrative statement explaining how the deed restrictions and/or covenants may affect the request is attached as Exhibit 5-5.

H. Surrounding property owners:

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

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

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input checked="" type="checkbox"/> Pedestrian Commercial	<input type="checkbox"/> Tidal Water
Is the property located within the "Platted Overlay" area on the Future Land Use Map? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

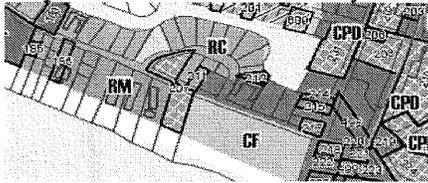
J. Zoning: (see official zoning map, as updated by subsequent actions)

<input type="checkbox"/> RS (Residential Single-family)	<input type="checkbox"/> CM (Commercial Marina)
<input checked="" type="checkbox"/> RC (Residential Conservation)	<input type="checkbox"/> CO (Commercial Office)
<input type="checkbox"/> RM (Residential Multifamily)	<input type="checkbox"/> CB (Commercial Boulevard)
<input type="checkbox"/> VILLAGE	<input type="checkbox"/> SANTINI
<input type="checkbox"/> SANTOS	<input type="checkbox"/> DOWNTOWN
<input type="checkbox"/> IN (Institutional)	<input type="checkbox"/> RPD (Residential Planned Dev.)
<input type="checkbox"/> CF (Community Facilities)	<input type="checkbox"/> CPD (Commercial Planned Dev.)
<input type="checkbox"/> CR (Commercial Resort)	<input type="checkbox"/> EC (Environmentally Critical)
<input type="checkbox"/> BB (Bay Beach)	

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-C

**Additional Required Information for a
Conventional Rezoning Application**

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

Case Number:
Project Name: PURTELL/PAINE
Authorized Applicant: Mike Roeder
LeePA STRAP Number: 24-46-23-W3-0050B-0050 and 24-46-23-0050B.0070

Current Property Status: Seasonal Rentals
Current Zoning: RC
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Comp Plan Density: _____ Platted Overlay? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Conventional rezoning:

From <u>RC</u> _____ (current zoning)
to <u>DOWNTOWN</u> _____ (requested zoning)

Any additional simultaneous zoning actions can be requested using the same Application for Public Hearing form, but must include all parts of the required supplemental forms and documentation, and include the fees for each request.

Paine/Purtell Narrative Statement

This is a request to rezone two properties located at 821 and 831 Estero Blvd. from RC (Residential Conservation) to Downtown. These two properties front Estero Blvd. almost directly across the street from Lynn Hall Park. In addition, they are located between the 7-11 convenience store on the south which is zoned Downtown and another parcel owned by Fred Paine on the north which is zoned CPD for a commercial parking lot. When Jim Purtell and Fred Paine purchased these properties over ten years ago, they were both zoned C-1 (Commercial) under the carry-over County zoning designation.

Recognizing these facts, the Town Council last year (2010) approved a land use designation change from Mixed Residential to Pedestrian Commercial to allow for more appropriate use of this property on the edge of Times Square. Please see the attached narrative for that land use amendment application (Attachment 3). So the primary rationale for this request is to align the zoning with the new land use designation. Residential Conservation (RC) is not an appropriate zoning category for the Pedestrian Commercial land use category.

The Downtown zoning district is identified, described and regulated by Section 34-671 through 678 of the Land Development Code. The map of the Downtown district that is shown in 34-672 has Estero Blvd. as a Primary Street and Lagoon Street as a Secondary Street encompassing the existing 7-11 convenience store, which is included within the Downtown district (Attachment 4). This convenience store was developed in 1983 under the County's C-1 zoning, which is the same zoning that the two properties had when they were purchased by Paine and Purtell and this designation remained until the Town changed the zoning to RC in 2003. Had these properties been developed commercially pursuant to that zoning prior to 2003, there is not doubt that they would have been included in the Pedestrian Commercial land use category and zoned Downtown. It is clear from the map provided that these two properties are located on the current boundary of the Downtown district and the expansion of that district to include them would be a logical change.

More importantly, the change would be supported by the same policies in the Comprehensive Plan that were cited by the Council in their approval of the land use change from Mixed Residential to Pedestrian Commercial, namely Goal 4, Objective 4-A, Policy 4-A-1, Policy 4-A-2 and Policy 4-A-4.

Goal 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict.

The location of these properties across Estero Blvd. from Lynn Hall Park suggests that they are much more appropriate for some type of pedestrian oriented commercial use than a “Residential Conservation” use.

Objective 4-A Small Town Character–Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The location of these two properties, across from Lynn Hall park and between a convenience store and public parking lot, again leads to the conclusion that they should be part of the pedestrian oriented public realm and not a residential enclave.

Policy 4-A-1 Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

While it is very likely that the future commercial development of these two properties would utilize the existing buildings, at that time any required parking could be relocated to the rear of 821 Estero Blvd. and the front of both buildings could be converted to attractive landscaped patio areas that would be welcoming to pedestrians.

Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

When these properties are submitted for conversion to some commercial development, the staff will be able to insure that the design and layout encourages pedestrian use, based on this policy.

Policy 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities.

There are two aspects to the implementation of this Policy in the present situation. On the one hand, the two properties are currently zoned Residential Conservation, which means that any future residential use of them would be subject to impacts from the 7-11, the commercial parking lot and Lynn Hall park. Rezoning to downtown would eliminate this conflict. At the same time, the Town could be concerned about any impacts to the residential uses across Lagoon Street. There are two responses. One is that there will always be a border between residential and commercial at some point, and in this case the commercial uses would be oriented to Estero Blvd. and separated from the residential uses to the rear by Lagoon Street. Perhaps more importantly, when the zoning was originally changed to RC in 2003, all of the property owners on both sides of Lagoon Street entered into a joint application the change all of their properties to

Pedestrian Commercial, in anticipation that their zoning would someday also be changed to a commercial category.

Policy 4-A-4 Easy walking access to the beach is a key element of the town’s human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Blvd. that would make it a barrier to the beach for pedestrians).

Again, the Town Council has already recognized the importance of this property’s location in regard to Lynn Hall park by changing the land use designation to Pedestrian Commercial. Downtown zoning is the logical complement to that land use category.

Commercial development in the Town is further governed by the policies to be found under **Objective 4-C, Applying the Future Land Use Map**, in particular **Policies 4-C-2, 4-C-3, 4-C-4 and 4-C-5**. **Policy 4-C-2** states that “Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. This policy also states the the LDC may allow an FAR in the Pedestrian Commercial category as high as 2.5. The most relevant language can be found in **Policy 4-C-3 ii.**, which reads as follows:

Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify the permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

At the risk of being redundant, this policy has four elements: 1) commercial uses are **encouraged** in the Pedestrian Commercial land use category, 2) the Land Development Code will provide the guidelines as to how the commercial development should respond to this category, 3) there should be a streamlined review process, and 4) the planned development zoning option is available to a landowner who seeks a use that is not otherwise provided for.

To summarize, this property is too strategically located not to be included in the pedestrian oriented Downtown centered on Times Square, the most distinctive feature of Ft. Myers Beach. The Plan encourages pedestrian oriented commercial development in the Pedestrian Commercial land use category, and these two lots are ideally located to add the pedestrian-oriented realm of the Times Square neighborhood. The Town having already designated these two properties as Pedestrian Commercial, is almost mandated by its Plan to rezone to the Downtown category.

The proposed change will not cause hazard or nuisance to persons or property, nor will it harm any environmental or natural resources. On both lots, there are only buildings, lawns and landscaping, and paved parking areas. There is no habitat or native vegetation of any significance.

Urban services are available and adequate to serve the properties, and they are served by transportation facilities with adequate capacity. Until actual commercial uses are identified for the

properties, it is very difficult to analyze the demand on public services. There are several commercial scenarios which would actually create less demand for water, sewer and transportation than the current short term rentals. Water is supplied by the County Green Meadows water treatment plant and then distributed by the Town. According to the most recent County concurrency report, Green Meadows had an Average Daily Flow design capacity of 9,000,000 gallons per day, and the projected demand for 2012 was 6,700,000 gallons per day (Attachment 5). Wastewater treatment is provided by the Ft. Myers Beach wastewater treatment plant on Pine Ridge Road. The permitted capacity for this facility is 6,000,000 gallons per day, and the County concurrency report projects a demand of 4,900,000 gallons per day for 2012 (Attachment 6).

Traffic on Estero Blvd. has always been a major problem, and the County had designated it as a "constrained" road with a maximum volume to capacity ratio of 1.85. In 2010 the volume to capacity ratio on the segment from Tropical Shores Way to Center Street was 1.07. On the segment from Tropical Shores Way to Voorhis Street the ratio was .94 and on the segment from Voorhis Street to Avenida Pescadora it was .80 (Attachment 7). It is likely that the ratio was much less on the north end of the Island where these properties are located. The Town actually has a different concurrency standard expressed in Policy 7-I-2:

The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard.

The County concurrency report stated that this standard was not exceeded in the years from 2004 to 2010 and will not be exceeded in 2011. It certainly won't be exceeded on the north end of the Island in the foreseeable future. And as indicated above, there is no certainty that the conversion to a commercial use would actually increase traffic beyond what is generated by the site now.

As a commercial site, there would be no potential demand placed on the school system; if there were a bed and breakfast, Lynn Hall Park is across the street, and Bowditch Point park is nearby. Any surface water issues would need to be addressed at the time of redevelopment.

FORT MYERS BEACH

NARRATIVE FOR COMPREHENSIVE PLAN AMENDMENT

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

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

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

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

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

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

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

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

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

DOWNTOWN

**Subdivision II.
DOWNTOWN
Zoning District**

Sec. 34-672. District map and applicability.

Sec. 34-671. Purpose.

The purpose of the DOWNTOWN district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets. Old San Carlos Boulevard will serve as the town's "Main Street" and will be anchored by pedestrian plazas at each end.

(a) The area indicated on Figure 34-6 is the outer perimeter of the DOWNTOWN district. Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the DOWNTOWN district, even if the property is shown on Figure 34-6.

(b) Streets have been categorized into primary streets, secondary streets, and pedestrian plazas to guide the regulations for properties fronting each type of street.

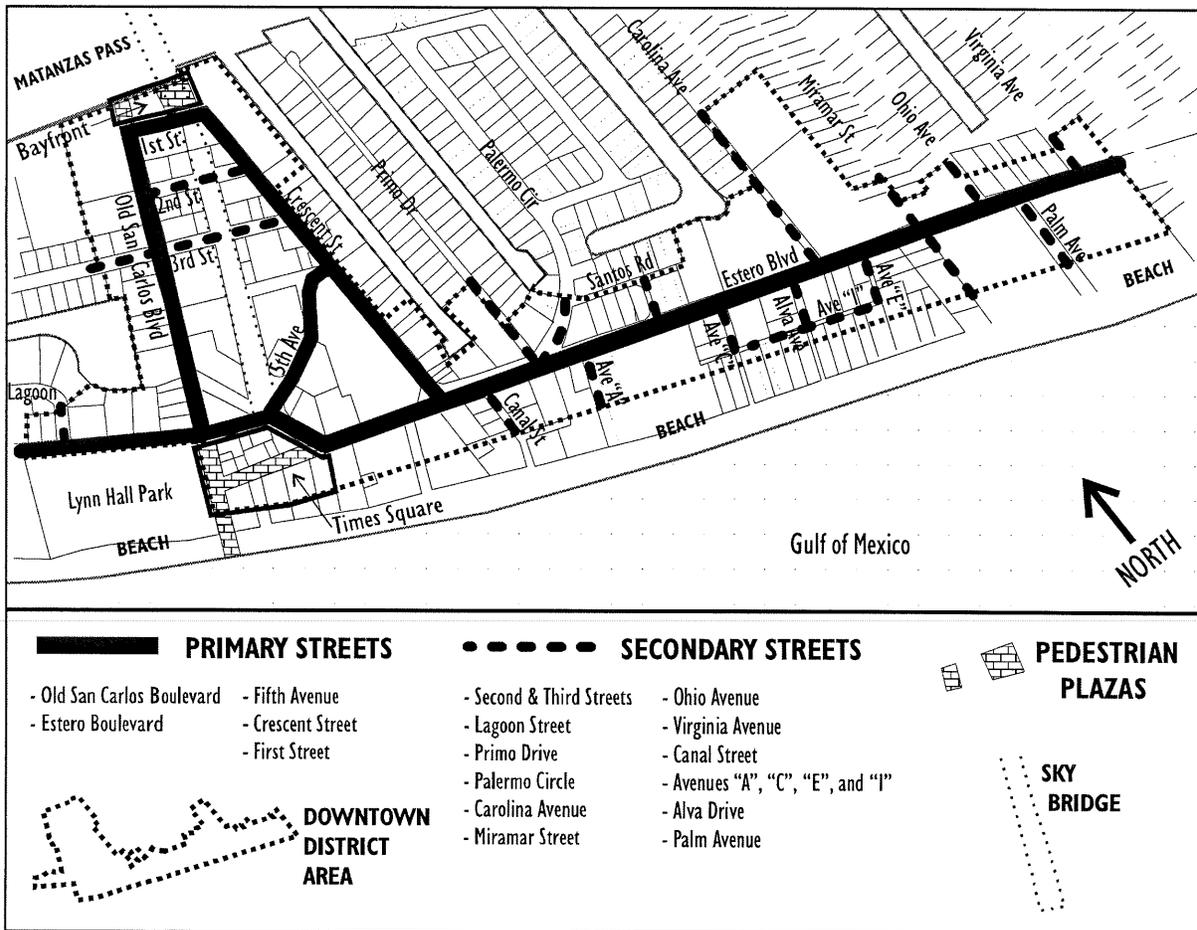


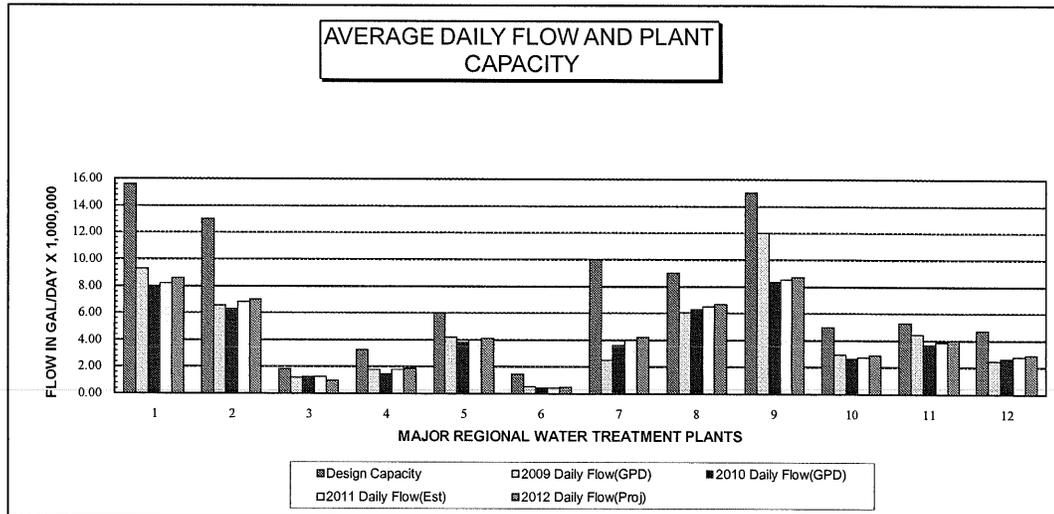
Figure 34-7

ATTACHMENT 5

TABLE 1
MAJOR REGIONAL WATER TREATMENT PLANTS

PLANT NAME	DESIGN CAPACITY AVERAGE DAILY FLOW GALLONS/DAY	AVERAGE DAILY FLOW IN PEAK MONTH GALLONS PER DAY			
		ACTUAL 2009	ACTUAL 2010	ESTIMATED 2011	PROJECTED 2012
BONITA SPRINGS UTILITIES					
- BONITA SPRINGS UTILITIES #1	9,000,000	4,182,903	3,490,323	3,600,000	3,800,000
- BONITA SPRINGS UTILITIES #2	6,600,000	5,089,355	4,490,645	4,600,000	4,800,000
1 TOTAL - BONITA SPRINGS UTILITIES	15,600,000	9,272,258	7,980,968	8,200,000	8,600,000
2 CITY OF FORT MYERS	13,000,000	6,556,129	6,265,467	6,800,000	7,000,000
GASPARILLA ISLAND WATER ASSN.					
- GASPARILLA ISLAND WATER ASSN. #1	576,000	269,839	275,433	280,000	285,000
- GASPARILLA ISLAND WATER ASSN. #2	1,270,000	948,097	965,533	985,000	1,000,000
3 TOTAL-GASPARILLA ISLAND WATER ASSN.	1,846,000	1,217,936	1,240,966	1,265,000	1,285,000
4 GREATER PINE ISLAND WATER ASSN.	3,290,000	1,780,713	1,472,778	1,800,000	1,900,000
5 ISLAND WATER ASSN.	5,990,000	4,201,000	3,812,000	4,000,000	4,150,000
LEE COUNTY UTILITIES					
6 - WATERWAY ESTATES WTP	1,500,000	536,226	437,290	475,000	500,000
7 - NORTH LEE COUNTY WTP	10,000,000	2,508,935	3,641,618	4,000,000	4,200,000
8 - GREEN MEADOWS WTP	9,000,000	6,073,839	6,279,419	6,500,000	6,700,000
9 - CORKSCREW WTP	15,000,000	12,003,387	8,358,000	8,500,000	8,700,000
10 - OLGA WTP	5,000,000	2,946,419	2,663,000	2,750,000	2,900,000
11 - PINWOODS WTP	5,300,000	4,453,129	3,673,226	3,850,000	4,000,000
TOTAL - LEE COUNTY UTILITIES	45,800,000	28,521,935	25,052,553	26,075,000	27,000,000
FLORIDA GOVERNMENTAL UTILITY AUTHORITY					
- LEHIGH UTILITIES #1	3,110,000	1,520,321	2,042,258	2,100,000	2,200,000
- LEHIGH UTILITIES #2	1,100,000	759,214	459,581	500,000	550,000
- LEHIGH UTILITIES #3 [See Note 1 below]	500,000	168,357	148,903	165,000	175,000
12 TOTAL - FLORIDA GOV UTILITY AUTHORITY	4,710,000	2,447,892	2,650,742	2,765,000	2,925,000

Note 1. This is a booster station that is interconnected with the City of Fort Myers. The interconnect is capable of purchasing up to 0.5 MGD of treated water from the City. Since chlorine is added at this booster station, the State considers this as WTP #3 and assigns a capacity of 500,000 GPD to this facility.

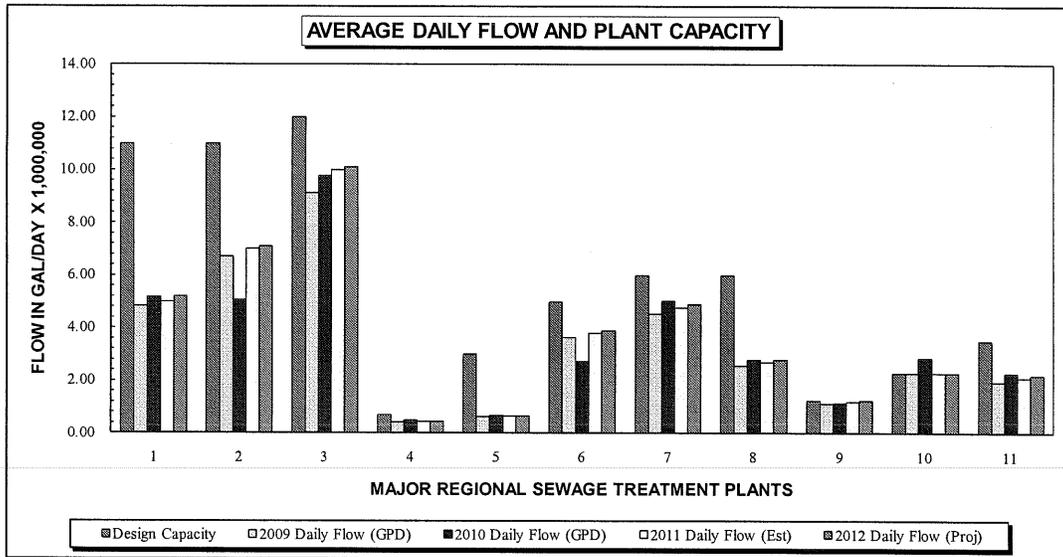


ATTACHMENT 6

TABLE 5

MAJOR REGIONAL SEWAGE TREATMENT PLANTS

PLANT NAME	PERMITTED CAPACITY AVERAGE DAILY FLOW GALLONS/DAY	AVERAGE DAILY FLOW IN PEAK MONTH GALLONS PER DAY			
		ACTUAL 2009	ACTUAL 2010	ESTIMATED 2011	PROJECTED 2012
BONITA SPRINGS UTILITIES					
- WATER RECLAMATION WEST WWTP	7,000,000	2,107,000	2,712,000	2,200,000	2,300,000
- WATER RECLAMATION EAST WWTP	4,000,000	2,731,000	2,461,000	2,800,000	2,900,000
1 TOTAL - BONITA SPRINGS UTILITIES	11,000,000	4,838,000	5,173,000	5,000,000	5,200,000
CITY OF FORT MYERS					
2 - RALEIGH STREET WWTP	11,000,000	6,710,000	5,060,000	7,000,000	7,100,000
3 - SOUTH DRIVE WWTP	12,000,000	9,130,000	9,760,000	10,000,000	10,100,000
GASPARILLA ISLAND WATER ASSOC.					
4 - GASPARILLA ISLAND WATER DOM DIW	705,000	428,000	489,000	440,000	450,000
LEE COUNTY UTILITIES					
5 - GATEWAY SERVICES-DIST 1 WWTP	3,000,000	628,000	679,000	640,000	645,000
6 - FIESTA VILLAGE WWTP	5,000,000	3,633,000	2,735,000	3,800,000	3,900,000
7 - FT MYERS BEACH WWTP	6,000,000	4,543,000	5,041,000	4,750,000	4,900,000
8 - THREE OAKS WWTP	6,000,000	2,574,000	2,789,000	2,700,000	2,800,000
9 - WATERWAY ESTATES WWTP	1,250,000	1,133,000	1,163,000	1,200,000	1,250,000
FLORIDA GOVERNMENTAL UTILITY AUTH					
10 - LEHIGH ACRES WWTP	2,300,000	2,299,000	2,864,000	2,300,000	2,300,000
11 - DEL PRADO (fka SUNCOAST) WWTP	3,500,000	1,949,000	2,303,000	2,100,000	2,200,000



first three (3) years of the CIP or the State Work Program to be considered. Transportation planning LOS issues identified during 2010/11 are described below.

Road Segments at Level of Service “F” Based on 2010 Traffic Counts

Colonial Boulevard from McGregor Boulevard to Summerlin Road (Existing LOS “F”, v/c = 1.04), from Summerlin Road to US 41 (Existing LOS “F”, v/c = 1.15), from Fowler Street to Metro Parkway (Existing LOS “F”, v/c = 1.15) and from Six Mile Cypress Parkway to I-75 (Existing LOS “F”, v/c = 1.05). These four (4) links are located within the City of Fort Myers. A PD & E study was being performed in order to assess the feasibility of the addition of express lanes to this facility, but the study was cancelled last year due to a lack of public support. Six-laning construction is currently underway for the section of Colonial Boulevard from Six Mile Cypress Parkway/Ortiz Avenue to I-75 extending further east to Lee Boulevard.

Estero Boulevard from Tropical Shores Way to Center Street (Existing LOS “F”, v/c = 1.07). This road link is located within the Town of Fort Myers Beach and is addressed in their Comprehensive Plan. This is a constrained facility which is unlikely to receive a motor vehicle capacity improvement in the near future, although the County has worked with the Town to evaluate possible reconstruction of Estero Boulevard and programmed funds for some interim improvements which include improved drainage, bicycle, pedestrian, and transit facilities.

Policy 7-I-2 of the Comprehensive Plan for the Town of Fort Myers Beach states: *“The peak capacity of Estero Boulevard’s congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard.”* This standard was not exceeded in the years from 2004 to 2010 and will not be exceeded in 2011.

McGregor Boulevard (SR 867) from Winkler Road to Tanglewood Boulevard (LOS “F”, v/c = 1.25) and from Tanglewood Boulevard to Colonial Boulevard (LOS “F”, v/c = 1.17). This is a constrained facility which is partially located within the City of Fort Myers. The volume to capacity ratios of 1.25 and 1.17 are well below THE LEE PLAN prescribed maximum of 1.85 allowed on constrained facilities and will not have an impact on concurrency for the upcoming year. Turn lane improvements at the McGregor Boulevard/Colonial Boulevard intersection which have been designed by the City of Fort Myers, and are a high priority for State funding, will contribute to improving capacity on this facility. The six (6) lane widening on Summerlin Road, which is under construction, will also provide parallel relief to McGregor Boulevard.

US 41 from Alico Road to Island Park Road (LOS = F; v/c = 1.00), from Jamaica Bay West to Six Mile Cypress Parkway (LOS = F; v/c = 1.14), from Daniels Parkway to College Parkway (LOS = F; v/c = 1.14), from South Drive to Boy Scout Drive (LOS = F; v/c = 1.12), from Fountain Interchange to North Key Drive (LOS = F; v/c = 1.12), from North Key Drive to Hancock Bridge Parkway (LOS = F; v/c = 1.20), and from Hancock Bridge Parkway to Pondella Road (LOS = F; v/c = 1.07). The FDOT is currently extending Metro Parkway from its current terminus at Six Mile Cypress Parkway to a new interchange planned at the intersection of Alico Road and US 41. The intent of this new six-lane arterial roadway is to provide parallel relief to US 41, thus improving the operating condition of US 41 from Alico Road to Six Mile Cypress Parkway. The

In accordance with the “810” rule in Policy 14.2.2, there have been restrictions placed on rezonings that could increase traffic on Pine Island Road. Lee County will continue this practice. The “910” rule of Policy 14.2.2 has also impacted development approvals on Pine Island.

Constrained Roads

Lee Plan Policy 37.2.2 addresses the maximum volume-to-capacity ratio allowed on constrained roads. It states:

A maximum volume-to-capacity (v/c) ratio of 1.85 is established for the constrained roads identified in Table 2(a) that lie in the unincorporated area. No permits will be issued by Lee County that cause the maximum volume-to-capacity ratio to be exceeded or that affect the maximum volume-to-capacity ratio once exceeded. Permits will only be issued when capacity enhancements and operational improvements are identified and committed for implementation that will maintain the volume-to-capacity ratio on the constrained segment at or below 1.85.

Based on traffic counts for 2010, the highest volume-to-capacity ratio on a constrained facility was 1.25 on McGregor Boulevard from Winkler Road to Tanglewood Boulevard. Estero Boulevard between Tropical Shores Way and Center Street in the Town of Fort Myers Beach had a volume-to-capacity ratio of 1.07. McGregor Boulevard from Tanglewood Boulevard to Colonial Boulevard had a volume-to-capacity ratio of 1.17. US 41 from Daniels Parkway to College Parkway had a volume-to-capacity ratio of 1.14 while the link from South Drive to Boy Scout Road had a volume-to-capacity ratio of 1.12. All other constrained facilities had a volume-to-capacity ratio less than 1.00. No facility will approach a volume-to-capacity ratio of 1.85 during the year 2011.

Estero Boulevard

The Town of Fort Myers Beach has adopted a different methodology for measuring the LOS on Estero Boulevard. Policy 7-I-2 of the Comprehensive Plan for the Town of Fort Myers Beach states: *“The peak capacity of Estero Boulevard’s congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard.”*

Data from the 2010 Traffic Counts (PCS #44) shows that the monthly averages were as follows:

MONTH	Average Vehicles/Hour	MONTH	Average Vehicles/Hour	MONTH	Average Vehicles/Hour
January	1,169	February	1,167	March	1,085
April	1,025	May	956	June	890
July	947	August	817	September	786
October	928	November	1,114	December	997

The standard of 1,300 vehicles per hour was not exceeded in any month in 2010, and will likely not be exceeded in 2011 during any four (4) calendar months.

ROADWAY LINK NAME	FROM	TO	ROAD TYPE	PERFORMANCE STANDARD		2010 100th HIGHEST HR		EST 2011 100th HIGHEST HR		FORECAST FUTURE VOL		NOTES*	LINK NO.
				LOS	CAPACITY	LOS	VOLUME	LOS	VOLUME	LOS	VOLUME		
DEL PRADO BL	CORAL POINT DR	HANCOCK BR PKWY	6LD	E	2,840	D	2,285	D	2,285	D	2,285		09200
DEL PRADO BL	HANCOCK BR PKWY	SR 78	6LD	E	2,780	D	1,363	D	1,363	D	1,363		09300
DEL PRADO BL	US 41	SLATER RD	2LU	E	920	C	309	C	309	D	810		09400
DR ML KING BL (SR 82)	CRANFORD AVE	HIGHLAND AVE	4LD	D	1,920	C	1,342	C	1,342	C	1,342		09470
DR ML KING BL (SR 82)	HIGHLAND AVE	MICHIGAN LINK	4LD	D	1,920	C	1,390	C	1,390	C	1,390		09480
DR ML KING BL (SR 82)	MICHIGAN LINK	ORTIZ AVE	4LD	D	1,920	C	1,606	C	1,606	C	1,606		09490
DR ML KING BL (SR 82)	ORTIZ AVE	I-75	6LD	D	2,900	C	1,565	C	1,566	C	1,566	6 Ln construction underway	09500
EAST 21st ST*	JOEL BL	GRANT AVE	2LU	E	860	B	24	B	24	B	24		09700
ESTERO BL	BIG CARLOS PASS	AVENIDA PESCADORA	2LN	E	726	A	420	A	420	A	429	Constrained v/c = 0.58	09800
ESTERO BL	AVENIDA PESCADORA	VOORHIS ST	2LN	E	726	B	581	B	582	B	582	Constrained v/c = 0.80	09900
ESTERO BL	VOORHIS ST	TROPICAL SHORES WAY	2LD	E	671	E	632	E	632	E	650	Constrained v/c = 0.94; Interim improvements in 2010/11	10000
ESTERO BL	TROPICAL SHORES WAY	CENTER ST	2LD	E	671	F	716	F	716	F	788	Constrained v/c = 1.07; Interim improvements in 2010/11	10100
ESTERO PKWY	US 41	THREE OAKS PKWY	4LD	E	2,000	B	399	B	403	B	705		14400
ESTERO PKWY	THREE OAKS PKWY	BEN HILL GRIFFIN	4LD	E	2,000	B	417	B	417	B	417		14450
EVERGREEN RD*	US 41	BUS 41	2LU	E	860	B	97	B	97	B	97		10200
FIDDLESTICKS BL	GUARDHOUSE	DANIELS PKWY	2LD	E	860	B	340	B	340	B	372		10300
FOWLER ST	US 41	N AIRPORT RD	6LD	E	2,560	D	850	D	865	D	867		10400
FOWLER ST	N AIRPORT RD	COLONIAL BL	6LD	E	2,560	D	948	D	948	D	948		10500
FOWLER ST	COLONIAL BL	WINKLER AVE	4LD	E	1,680	C	790	C	790	C	790		10600
FOWLER ST	WINKLER AVE	HANSON ST	4LD	E	1,680	C	970	C	970	C	970		10700
FOWLER ST (SR 739)	HANSON ST	DR ML KING BL (SR 82)	4LD	E	1,680	C	873	C	873	C	873		10730
GASPARILLA BL	FIFTH ST	CHARLOTTE COUNTY LINE	2LU	E	860	B	322	B	332	B	343	Constrained v/c = 0.37	10800
GLADIOLUS DR	McGREGOR BL	PINE RIDGE RD	4LD	E	1,840	C	393	C	393	C	451		10900
GLADIOLUS DR	PINE RIDGE RD	BASS RD	4LD	E	1,840	C	642	C	656	C	744		11000
GLADIOLUS DR	BASS RD	WINKLER RD	6LD	E	2,760	C	957	C	962	C	1,033		11100
GLADIOLUS DR	WINKLER RD	SUMMERLIN RD	6LD	E	3,060	C	1,025	C	1,025	C	1,034		11200
GLADIOLUS DR	SUMMERLIN RD	US 41	6LD	E	3,060	C	1,847	C	1,848	C	2,005		11300
GREENBRIAR BL*	RICHMOND AVE	JOEL BL	2LU	E	860	B	58	B	64	B	64		11400
GUNNERY RD	IMMOKALEE RD (SR 82)	LEE BL	4LD	E	2,020	B	818	B	829	B	852		11500



Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

December 21 2011

Mike Roeder
Knott Consoler Ebelini Hart & Swett, P.A.
1625 Hendry Street Suite 301
Fort Myers, FL 33901

Re: Purtell/Paine Rezoning, FMBREZ2011-0001

Dear: Mr. Roeder,

The Community Development Department has received your response to the staff letter mailed on November 2, 2011, thank you.

Staff has reviewed the information provided in your response for the above referenced zoning application. Staff's comments have not been adequately addressed and therefore the application cannot proceed to a Local Planning Agency public hearing. Please respond specifically and individually to each requirement not satisfied on the attached sufficiency checklists.

If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the LDC requires that this application be considered withdrawn.

Should you have any questions or require further clarification on Staff's comments please do not hesitate to contact me.

Sincerely,

Leslee Chapman
Zoning Coordinator
Town of Fort Myers Beach
Community Development

Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

ZONING REVIEW – Leslee Chapman

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Section 34-85(2)(g) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Please provide additional information as to how the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Section 34-85(2)(h) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Please provide additional information as to how the request meets or exceeds all performance and locational standards set forth for the proposed use.

Section 34-85(2)(k) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Please provide additional information as to how the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Leslee Chapman
Zoning Coordinator
239-765-0202 ext 105

Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

ENVIRONMENTAL SCIENCES REVIEW – Keith Laakkonen

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Section 34-85(2)(j) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Please provide additional information and justification that indicates that environmentally critical areas and/or natural resources will not be impacted.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Keith Laakkonen
Environmental Sciences Coordinator
239-765-0202 ext 136

PUBLIC WORKS REVIEW – Cathie Lewis

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

The subject application has no initial impact related to Public Works. Should the properties be redeveloped under the Downtown zoning provisions there will be significant impacts that will require a thorough review by Public Works.

Stormwater Management is an issue that will need to be addressed and could be a condition of the rezoning process. Currently there is no stormwater management infrastructure installed on Lagoon Road. The stormwater system along Estero Boulevard is not permitted to handle the flows from the existing private properties or increased density from the same.

Section 34-85(2)(i) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Please provide additional information and justification that indicates that urban services are, or will be, available and adequate to serve the proposed land use change.

Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

Section 34-85(2)(l) Whether the location of the request places an 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 development

Please provide additional information and justification that indicates that the location of the request does not put an undue burden upon existing transportation or other services and facilities and that the requested rezoning will be served by streets with the capacity to carry traffic generated by the development.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Cathie Lewis
Public Works Director
239-765-0202 ext 138

Knott · Ebelini · Hart

Attorneys At Law

TOWN OF
FORT MYERS BEACH

JAN - 4 2012

RECEIVED BY

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+ Board Certified Business Litigation Lawyer
◇ Board Certified Construction Lawyer

MRoeder@knott-law.com

January 4, 2012

Ms. Leslee Chapman
Zoning Coordinator
Town of Ft. Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

RE: Purtell/Paine Rezoning, FMBREZ 2011-0001

Dear Leslee:

In response to your letter dated December 21, 2011, please accept the following additional information for your review.

Section 34-85(2)(a) Whether there exists an error or ambiguity which must be corrected.

There are no obvious errors or ambiguities, other than the property owners always believed that changing the zoning to RC in the first place was not appropriate.

Section 34-85(2)(b) Whether there exist changed or changing conditions which make approval of the request appropriate.

Yes, there does exist a changed condition, which was the decision of the Town Council to change the land use designation from Mixed Residential to Pedestrian Commercial in 2010. RC is not an appropriate zoning category in the Pedestrian Commercial land use category, as will be more fully explained below.

Section 334-85(2)(c) The impact of the proposed change on the intent of this chapter.

This requested change is consistent with Section 34-1(a)(2) and (10) in that it will promote the appropriate and best use of land and will be in accordance with the Fort Myers Beach Comprehensive Plan as described below.

Section 34-85(2)(g) Whether the request is consistent with the goals, objectives, policies and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

This request is consistent with the Ft. Myers Beach Plan because the change would be supported by the same policies in the Comprehensive Plan that were cited by the Council in their approval of the land use change from Mixed Residential to Pedestrian Commercial, mainly Goal 4, Objective 4-A, Policy 4-A-1, Policy 4-A-2 and Policy 4-A-4.

Goal 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict.

The location of these properties across Estero Blvd. from Lynn Hall Park suggests that they are much more appropriate for some type of pedestrian oriented commercial use than a “Residential Conservation” use.

Objective 4-A Small Town Character—Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The location of these two properties, across from Lynn Hall park and between a convenience store and public parking lot, again leads to the conclusion that they should be part of the pedestrian oriented public realm and not a residential enclave.

Policy 4-A-1 Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

While it is very likely that the future commercial development of these two properties would utilize the existing buildings, at that time any required parking could be relocated to the rear of 821 Estero Blvd. and the front of both buildings could be converted to attractive landscaped patio areas that would be welcoming to pedestrians.

Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

When these properties are submitted for conversion to some commercial development, the staff will be able to insure that the design and layout encourages pedestrian use, based on this policy.

Policy 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities.

There are two aspects to the implementation of this Policy in the present situation. On the one hand, the two properties are currently zoned Residential Conservation, which means that any future residential use of them would be subject to impacts from the 7-11, the commercial parking lot and Lynn Hall park. Rezoning to Downtown would eliminate this conflict. At the same time, the Town could be concerned about any impacts to the residential uses across Lagoon Street. There are two responses. One is that there will always be a border between residential and commercial at some point, and in this case the commercial uses would be oriented to Estero Blvd. and separated from the residential uses to the rear by Lagoon Street. Perhaps more importantly, when the zoning was originally changed to RC in 2003, all of the property owners on both sides of Lagoon Street entered into a joint application to change all of their properties to Pedestrian Commercial, in anticipation that their zoning would someday also be changed to a commercial category.

Policy 4-A-4 Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Blvd. that would make it a barrier to the beach for pedestrians).

Again, the Town Council has already recognized the importance of this property's location in regard to Lynn Hall park by changing the land use designation to Pedestrian Commercial. Downtown zoning is the logical complement to that land use category.

Section 34-85(2)(h) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Commercial development in the Town is governed by the policies to be found under **Objective 4-C, Applying the Future Land Use Map**, and in particular **Policies 4-C-2, 4-C-3, 4-C-4 and 4-C-5**. **Policy 4-C-2** states that "Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. This policy also states that the LDC may allow an FAR in the Pedestrian Commercial category as high as 2.5. The most relevant language can be found in **Policy 4-C-3 ii.**, which reads as follows:

Where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify the permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

This policy has four elements: 1) commercial uses are **encouraged** in the Pedestrian Commercial land use category, 2) the Land Development Code will provide the guidelines as to how the commercial development should respond to this category, 3) there should be a streamlined review process, and 4) the planned development zoning option is available to a landowner who seeks a use that is not otherwise provided for.

The Downtown zoning district is identified, described and regulated by Section 34-671 through 678 of the Land Development Code. The map of the Downtown district that is shown in 34-672 has Estero Blvd. as a Primary Street and Lagoon Street as a Secondary Street encompassing the existing 7-11 convenience store, which is included within the Downtown district (Attachment 1). This convenience store was developed in 1983 under the County's C-1 zoning, which is the same zoning that the two properties had when they were purchased by Paine and Purtell and this designation remained until the Town changed the zoning to RC in 2003. Had these properties been developed commercially pursuant to that zoning prior to 2003, there is not doubt that they would have been included in the Pedestrian Commercial land use category and zoned Downtown. It is clear from the map provided that these two properties are located on the current boundary of the Downtown district and the expansion of that district to include them would be a logical change.

Section 34-85(2)(i) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Urban services are available and adequate to serve the properties, and they are served by transportation facilities with adequate capacity. However, until actual commercial uses are identified for the properties, it is very difficult to analyze the demand on public services. There are several commercial scenarios which would actually create less demand for water, sewer and transportation than the current short term rentals. Water is supplied by the County Green Meadows water treatment plant and then distributed by the Town. According to the most recent County concurrency report, Green Meadows had an Average Daily Flow design capacity of 9,000,000 gallons per day, and the projected demand for 2012 was 6,700,000 gallons per day (Attachment 2). Wastewater treatment is provided by the Ft. Myers Beach wastewater treatment plant on Pine Ridge Road. The permitted capacity for this facility is 6,000,000 gallons per day, and the County concurrency report projects a demand of 4,900,000 gallons per day for 2012 (Attachment 3).

Section 34-85(2)(j) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

There are no critical areas or natural resources on the two lots. Please see attached photos.

Section 34-85(2)(k) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

It is not possible to provide a definitive answer to this question since the Downtown zoning would allow for a variety of uses. The properties are quite small which means that any future development will be modest in scope. In addition, the Town will have an opportunity to insure that any proposed uses are designed to be compatible with neighboring properties when a development order is applied for.

Section 34-85(2)(l) Whether the location of the request places an 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 development.

Traffic on Estero Blvd. has always been a major problem, and the County had designated it as a "constrained" road with a maximum volume to capacity ratio of 1.85. In 2010 the volume to capacity ratio on the segment from Tropical Shores Way to Center Street was 1.07. On the segment from Tropical Shores Way to Voorhis Street the ratio was .94 and on the segment from Voorhis Street to Avenida Pescadora it was .80 (Attachment 4). It is likely that the ratio was much less on the north end of the Island where these properties are located. The Town actually has a different concurrency standard expressed in Policy 7-I-2:

The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard.

The County concurrency report stated that this standard was not exceeded in the years from 2004 to 2010 and will not be exceeded in 2011. It certainly won't be exceeded on the north end of the Island in the foreseeable future. And as indicated above, there is no certainty that the conversion to a commercial use would actually increase traffic beyond what is generated by the site now, especially since this is an infill site with limited redevelopment potential.

Ms. Chapman
Page 6
January 4, 2012

Please let me know if you need any additional information. I know that the clients are anxious to have the hearings scheduled before the LPA and the Town Council. Thank you very much for your assistance.

Very truly yours,

KNOTT EBELINI HART



Michael E. Roeder, AICP
Director of Zoning and Land Use Planning
MER:pw

cc: Fred Paine
James Purtell

0050A 0390

0100

0050B 0070

0050B 01

0050B 0050

0050B 00

ESTERO BLVD



ATTACHMENT 1

Sec. 34-671

DOWNTOWN

Subdivision II. DOWNTOWN Zoning District

Sec. 34-672. District map and applicability.

Sec. 34-671. Purpose.

The purpose of the DOWNTOWN district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets. Old San Carlos Boulevard will serve as the town's "Main Street" and will be anchored by pedestrian plazas at each end.

(a) The area indicated on Figure 34-6 is the outer perimeter of the DOWNTOWN district. Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the DOWNTOWN district, even if the property is shown on Figure 34-6.

(b) Streets have been categorized into primary streets, secondary streets, and pedestrian plazas to guide the regulations for properties fronting each type of street.

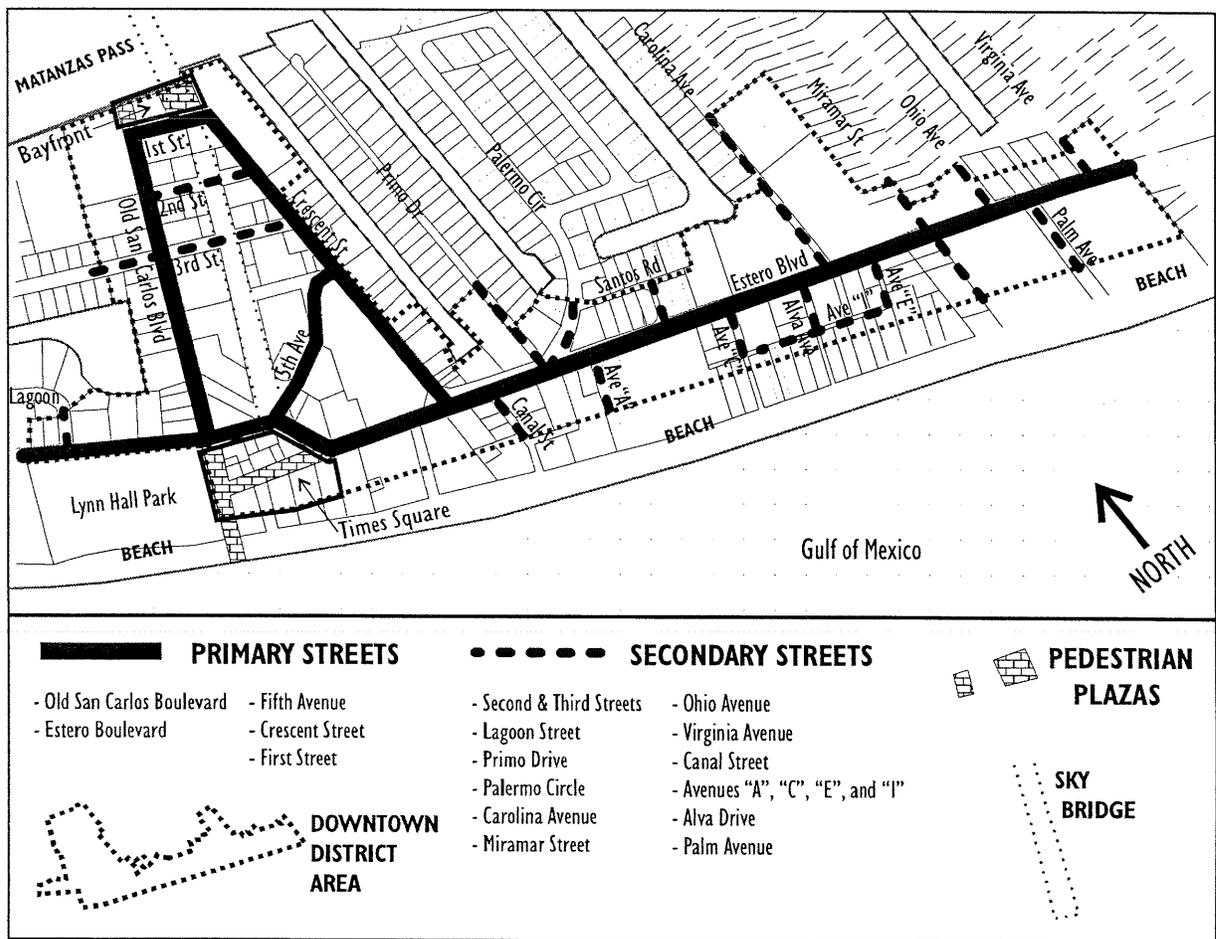


Figure 34-7

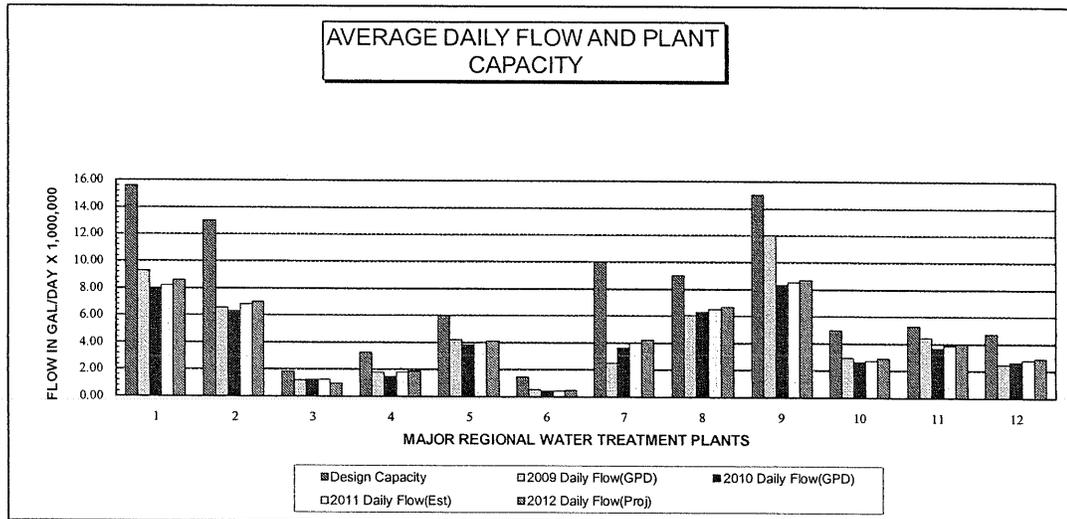
ATTACHMENT 2

TABLE 1

MAJOR REGIONAL WATER TREATMENT PLANTS

PLANT NAME	DESIGN CAPACITY AVERAGE DAILY FLOW GALLONS/DAY	AVERAGE DAILY FLOW IN PEAK MONTH GALLONS PER DAY			
		ACTUAL 2009	ACTUAL 2010	ESTIMATED 2011	PROJECTED 2012
BONITA SPRINGS UTILITIES					
- BONITA SPRINGS UTILITIES #1	9,000,000	4,182,903	3,490,323	3,600,000	3,800,000
- BONITA SPRINGS UTILITIES #2	6,600,000	5,089,355	4,490,645	4,600,000	4,800,000
1 TOTAL - BONITA SPRINGS UTILITIES	15,600,000	9,272,258	7,980,968	8,200,000	8,600,000
2 CITY OF FORT MYERS	13,000,000	6,556,129	6,285,467	6,800,000	7,000,000
GASPARILLA ISLAND WATER ASSN.					
- GASPARILLA ISLAND WATER ASSN. #1	576,000	269,839	275,433	280,000	285,000
- GASPARILLA ISLAND WATER ASSN. #2	1,270,000	948,097	965,533	985,000	1,000,000
3 TOTAL-GASPARILLA ISLAND WATER ASSN.	1,846,000	1,217,936	1,240,966	1,265,000	1,285,000
4 GREATER PINE ISLAND WATER ASSN.	3,290,000	1,780,713	1,472,778	1,800,000	1,900,000
5 ISLAND WATER ASSN.	5,990,000	4,201,000	3,812,000	4,000,000	4,150,000
LEE COUNTY UTILITIES					
6 - WATERWAY ESTATES WTP	1,500,000	536,226	437,290	475,000	500,000
7 - NORTH LEE COUNTY WTP	10,000,000	2,508,935	3,641,618	4,000,000	4,200,000
8 - GREEN MEADOWS WTP	9,000,000	6,073,839	6,279,419	6,500,000	6,700,000
9 - CORKSCREW WTP	15,000,000	12,003,387	8,358,000	8,500,000	8,700,000
10 - OLGA WTP	5,000,000	2,946,419	2,663,000	2,750,000	2,900,000
11 - PINEWOODS WTP	5,300,000	4,453,129	3,673,226	3,850,000	4,000,000
TOTAL - LEE COUNTY UTILITIES	45,800,000	28,521,935	25,052,553	26,075,000	27,000,000
FLORIDA GOVERNMENTAL UTILITY AUTHORITY					
- LEHIGH UTILITIES #1	3,110,000	1,520,321	2,042,258	2,100,000	2,200,000
- LEHIGH UTILITIES #2	1,100,000	759,214	459,581	500,000	550,000
- LEHIGH UTILITIES #3 [See Note 1 below]	500,000	168,357	148,903	165,000	175,000
12 TOTAL - FLORIDA GOV UTILITY AUTHORITY	4,710,000	2,447,892	2,650,742	2,765,000	2,925,000

Note 1. This is a booster station that is interconnected with the City of Fort Myers. The interconnect is capable of purchasing up to 0.5 MGD of treated water from the City. Since chlorine is added at this booster station, the State considers this as WTP #3 and assigns a capacity of 500,000 GPD to this facility.

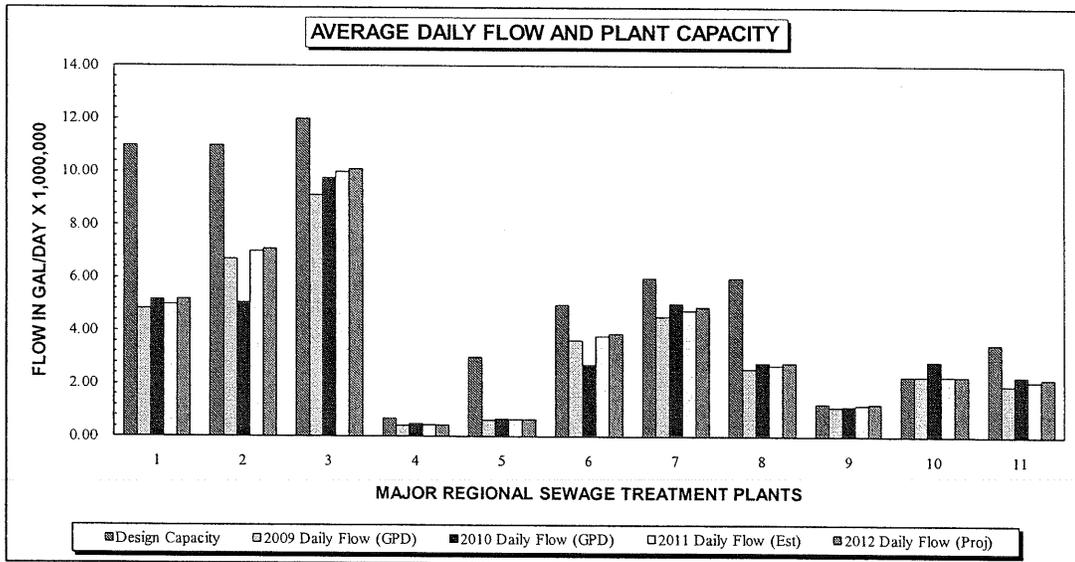


ATTACHMENT 3

TABLE 5

MAJOR REGIONAL SEWAGE TREATMENT PLANTS

PLANT NAME	PERMITTED CAPACITY AVERAGE DAILY FLOW GALLONS/DAY	AVERAGE DAILY FLOW IN PEAK MONTH GALLONS PER DAY			
		ACTUAL 2009	ACTUAL 2010	ESTIMATED 2011	PROJECTED 2012
BONITA SPRINGS UTILITIES					
- WATER RECLAMATION WEST WWTP	7,000,000	2,107,000	2,712,000	2,200,000	2,300,000
- WATER RECLAMATION EAST WWTP	4,000,000	2,731,000	2,461,000	2,800,000	2,900,000
1 TOTAL - BONITA SPRINGS UTILITIES	11,000,000	4,838,000	5,173,000	5,000,000	5,200,000
CITY OF FORT MYERS					
2 - RALEIGH STREET WWTP	11,000,000	6,710,000	5,060,000	7,000,000	7,100,000
3 - SOUTH DRIVE WWTP	12,000,000	9,130,000	9,760,000	10,000,000	10,100,000
GASPARILLA ISLAND WATER ASSOC.					
4 - GASPARILLA ISLAND WATER DOM DIW	705,000	428,000	489,000	440,000	450,000
LEE COUNTY UTILITIES					
5 - GATEWAY SERVICES-DIST 1 WWTP	3,000,000	628,000	679,000	640,000	645,000
6 - FIESTA VILLAGE WWTP	5,000,000	3,633,000	2,735,000	3,800,000	3,900,000
7 - FT MYERS BEACH WWTP	6,000,000	4,543,000	5,041,000	4,750,000	4,900,000
8 - THREE OAKS WWTP	6,000,000	2,574,000	2,789,000	2,700,000	2,800,000
9 - WATERWAY ESTATES WWTP	1,250,000	1,133,000	1,163,000	1,200,000	1,250,000
FLORIDA GOVERNMENTAL UTILITY AUTH					
10 - LEHIGH ACRES WWTP	2,300,000	2,299,000	2,864,000	2,300,000	2,300,000
11 - DEL PRADO (fka SUNCOAST) WWTP	3,500,000	1,949,000	2,303,000	2,100,000	2,200,000



ATTACHMENT 4

first three (3) years of the CIP or the State Work Program to be considered. Transportation planning LOS issues identified during 2010/11 are described below.

Road Segments at Level of Service "F" Based on 2010 Traffic Counts

Colonial Boulevard from McGregor Boulevard to Summerlin Road (Existing LOS "F", v/c = 1.04), from Summerlin Road to US 41 (Existing LOS "F", v/c = 1.15), from Fowler Street to Metro Parkway (Existing LOS "F", v/c = 1.15) and from Six Mile Cypress Parkway to I-75 (Existing LOS "F", v/c = 1.05). These four (4) links are located within the City of Fort Myers. A PD & E study was being performed in order to assess the feasibility of the addition of express lanes to this facility, but the study was cancelled last year due to a lack of public support. Six-laning construction is currently underway for the section of Colonial Boulevard from Six Mile Cypress Parkway/Ortiz Avenue to I-75 extending further east to Lee Boulevard.

Estero Boulevard from Tropical Shores Way to Center Street (Existing LOS "F", v/c = 1.07). This road link is located within the Town of Fort Myers Beach and is addressed in their Comprehensive Plan. This is a constrained facility which is unlikely to receive a motor vehicle capacity improvement in the near future, although the County has worked with the Town to evaluate possible reconstruction of Estero Boulevard and programmed funds for some interim improvements which include improved drainage, bicycle, pedestrian, and transit facilities.

Policy 7-I-2 of the Comprehensive Plan for the Town of Fort Myers Beach states: *"The peak capacity of Estero Boulevard's congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard."* This standard was not exceeded in the years from 2004 to 2010 and will not be exceeded in 2011.

McGregor Boulevard (SR 867) from Winkler Road to Tanglewood Boulevard (LOS "F", v/c = 1.25) and from Tanglewood Boulevard to Colonial Boulevard (LOS "F", v/c = 1.17). This is a constrained facility which is partially located within the City of Fort Myers. The volume to capacity ratios of 1.25 and 1.17 are well below THE LEE PLAN prescribed maximum of 1.85 allowed on constrained facilities and will not have an impact on concurrency for the upcoming year. Turn lane improvements at the McGregor Boulevard/Colonial Boulevard intersection which have been designed by the City of Fort Myers, and are a high priority for State funding, will contribute to improving capacity on this facility. The six (6) lane widening on Summerlin Road, which is under construction, will also provide parallel relief to McGregor Boulevard.

US 41 from Alico Road to Island Park Road (LOS = F; v/c = 1.00), from Jamaica Bay West to Six Mile Cypress Parkway (LOS = F; v/c = 1.14), from Daniels Parkway to College Parkway (LOS = F; v/c = 1.14), from South Drive to Boy Scout Drive (LOS = F; v/c = 1.12), from Fountain Interchange to North Key Drive (LOS = F; v/c = 1.12), from North Key Drive to Hancock Bridge Parkway (LOS = F; v/c = 1.20), and from Hancock Bridge Parkway to Pondella Road (LOS = F; v/c = 1.07). The FDOT is currently extending Metro Parkway from its current terminus at Six Mile Cypress Parkway to a new interchange planned at the intersection of Alico Road and US 41. The intent of this new six-lane arterial roadway is to provide parallel relief to US 41, thus improving the operating condition of US 41 from Alico Road to Six Mile Cypress Parkway. The

In accordance with the “810” rule in Policy 14.2.2, there have been restrictions placed on rezonings that could increase traffic on Pine Island Road. Lee County will continue this practice. The “910” rule of Policy 14.2.2 has also impacted development approvals on Pine Island.

Constrained Roads

Lee Plan Policy 37.2.2 addresses the maximum volume-to-capacity ratio allowed on constrained roads. It states:

A maximum volume-to-capacity (v/c) ratio of 1.85 is established for the constrained roads identified in Table 2(a) that lie in the unincorporated area. No permits will be issued by Lee County that cause the maximum volume-to-capacity ratio to be exceeded or that affect the maximum volume-to-capacity ratio once exceeded. Permits will only be issued when capacity enhancements and operational improvements are identified and committed for implementation that will maintain the volume-to-capacity ratio on the constrained segment at or below 1.85.

Based on traffic counts for 2010, the highest volume-to-capacity ratio on a constrained facility was 1.25 on McGregor Boulevard from Winkler Road to Tanglewood Boulevard. Estero Boulevard between Tropical Shores Way and Center Street in the Town of Fort Myers Beach had a volume-to-capacity ratio of 1.07. McGregor Boulevard from Tanglewood Boulevard to Colonial Boulevard had a volume-to-capacity ratio of 1.17. US 41 from Daniels Parkway to College Parkway had a volume-to-capacity ratio of 1.14 while the link from South Drive to Boy Scout Road had a volume-to-capacity ratio of 1.12. All other constrained facilities had a volume-to-capacity ratio less than 1.00. No facility will approach a volume-to-capacity ratio of 1.85 during the year 2011.

Estero Boulevard

The Town of Fort Myers Beach has adopted a different methodology for measuring the LOS on Estero Boulevard. Policy 7-I-2 of the Comprehensive Plan for the Town of Fort Myers Beach states: *“The peak capacity of Estero Boulevard’s congested segments is 1,300 vehicles per hour. The minimum acceptable level-of-service standard for Estero Boulevard shall be that average monthly traffic flows from 10:00 A.M. to 5:00 P.M. during each month do not exceed that level for more than four calendar months in any continuous twelve month period. Measurements from the Permanent Count Station at Donora Boulevard shall be used for this standard.”*

Data from the 2010 Traffic Counts (PCS #44) shows that the monthly averages were as follows:

MONTH	Average Vehicles/Hour	MONTH	Average Vehicles/Hour	MONTH	Average Vehicles/Hour
January	1,169	February	1,167	March	1,085
April	1,025	May	956	June	890
July	947	August	817	September	786
October	928	November	1,114	December	997

The standard of 1,300 vehicles per hour was not exceeded in any month in 2010, and will likely not be exceeded in 2011 during any four (4) calendar months.

ROADWAY LINK NAME	FROM	TO	ROAD TYPE	PERFORMANCE STANDARD		2010 100th HIGHEST HR		EST 2011 100th HIGHEST HR		FORECAST FUTURE VOL		NOTES*	LINK NO.
				LOS	CAPACITY	LOS	VOLUME	LOS	VOLUME	LOS	VOLUME		
DEL PRADO BL	CORAL POINT DR	HANCOCK BR PKWY	6LD	E	2,840	D	2,285	D	2,285	D	2,285		09200
DEL PRADO BL	HANCOCK BR PKWY	SR 78	6LD	E	2,780	D	1,363	D	1,363	D	1,363		09300
DEL PRADO BL	US 41	SLATER RD	2LU	E	920	C	309	C	309	D	810		09400
DR ML KING BL (SR 82)	CRANFORD AVE	HIGHLAND AVE	4LD	D	1,920	C	1,342	C	1,342	C	1,342		09470
DR ML KING BL (SR 82)	HIGHLAND AVE	MICHIGAN LINK	4LD	D	1,920	C	1,390	C	1,390	C	1,390		09480
DR ML KING BL (SR 82)	MICHIGAN LINK	ORTIZ AVE	4LD	D	1,920	C	1,606	C	1,606	C	1,606		09490
DR ML KING BL (SR 82)	ORTIZ AVE	I-75	6LD	D	2,900	C	1,565	C	1,566	C	1,566	6 Ln construction underway	09500
EAST 21st ST*	JOEL BL	GRANT AVE	2LU	E	860	B	24	B	24	B	24		09700
ESTERO BL	BIG CARLOS PASS	AVENIDA PESCADORA	2LN	E	726	A	420	A	420	A	429	Constrained v/c = 0.58	09800
ESTERO BL	AVENIDA PESCADORA	VOORHIS ST	2LN	E	726	B	581	B	582	B	582	Constrained v/c = 0.80	09900
ESTERO BL	VOORHIS ST	TROPICAL SHORES WAY	2LD	E	671	E	632	E	632	E	650	Constrained v/c = 0.94; Interim improvements in 2010/11	10000
ESTERO BL	TROPICAL SHORES WAY	CENTER ST	2LD	E	671	F	716	F	716	F	788	Constrained v/c = 1.07; Interim improvements in 2010/11	10100
ESTERO PKWY	US 41	THREE OAKS PKWY	4LD	E	2,000	B	399	B	403	B	705		14400
ESTERO PKWY	THREE OAKS PKWY	BEN HILL GRIFFIN	4LD	E	2,000	B	417	B	417	B	417		14450
EVERGREEN RD*	US 41	BUS 41	2LU	E	860	B	97	B	97	B	97		10200
FIDDLESTICKS BL	GUARDHOUSE	DANIELS PKWY	2LD	E	860	B	340	B	340	B	372		10300
FOWLER ST	US 41	N AIRPORT RD	6LD	E	2,560	D	850	D	865	D	867		10400
FOWLER ST	N AIRPORT RD	COLONIAL BL	6LD	E	2,560	D	948	D	948	D	948		10500
FOWLER ST	COLONIAL BL	WINKLER AVE	4LD	E	1,680	C	790	C	790	C	790		10600
FOWLER ST	WINKLER AVE	HANSON ST	4LD	E	1,680	C	970	C	970	C	970		10700
FOWLER ST (SR 739)	HANSON ST	DR ML KING BL (SR 82)	4LD	E	1,680	C	873	C	873	C	873		10730
GASPARILLA BL	FIFTH ST	CHARLOTTE COUNTY LINE	2LU	E	860	B	322	B	332	B	343	Constrained v/c = 0.37	10800
GLADIOLUS DR	MCGREGOR BL	PINE RIDGE RD	4LD	E	1,840	C	393	C	393	C	451		10900
GLADIOLUS DR	PINE RIDGE RD	BASS RD	4LD	E	1,840	C	642	C	656	C	744		11000
GLADIOLUS DR	BASS RD	WINKLER RD	6LD	E	2,760	C	957	C	962	C	1,033		11100
GLADIOLUS DR	WINKLER RD	SUMMERLIN RD	6LD	E	3,060	C	1,025	C	1,025	C	1,034		11200
GLADIOLUS RD	SUMMERLIN RD	US 41	6LD	E	3,060	C	1,847	C	1,848	C	2,005		11300
GREENBRIAR BL*	RICHMOND AVE	JOEL BL	2LU	E	860	B	58	B	64	B	64		11400
GUNNERY RD	IMMOKALEE RD (SR 82)	LEE BL	4LD	E	2,020	B	818	B	829	B	852		11500

From: [Michael E. Roeder](#)
To: [Leslee Chapman](#)
Cc: [Walter Fluegel](#)
Subject: Policy 4-B-6
Date: Tuesday, January 24, 2012 4:34:54 PM

Leslee,

After we discussed this policy this afternoon, and how it could be addressed, I spoke with Bill Spikowski, Max Forgey and Jerry Murphy to see if they had any experience with implementing the policy or any suggestions. None of them had ever had to work with the "non-residential" criteria, and Bill said he could not even remember writing it, but that it was probably a detail that DCA forced them to add. He said that he probably put in the 90% as a sop to DCA and something that would never be approached. None of them thought it was possible that the existing Pedestrian Commercial district could be approaching 90% non-residential.

Jerry had the most practical suggestion, and that would be to defer the analysis until we come in with a definite development order proposal for which the numbers could be crunched at that time. There were other policies that I said would have to be analyzed and enforced at the development order stage, such as the "pedestrian oriented design," and this would also logically fall into that category. The Downtown zoning allows for residential uses, and there are residential uses on the property now, so it would be very hypothetical to analyze a maximum commercial development that may never happen. The appropriate time to look at that would be with a specific development order proposal, and that is what I would like to offer as our response to this question.

We can discuss this tomorrow morning, unless you think I have already solved the problem.

Regards,

Michael E. Roeder, AICP
Director of Zoning and Land Use Planning
Knott Ebelini Hart
239-334-2722
MRoeder@knott-law.com

Knott · Ebelini · Hart

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Director of Zoning
and Land Use Planning

MRoeder@knott-law.com

January 30, 2012

TOWN OF
FORT MYERS BEACH

JAN 31 2012

RECEIVED BY

Ms. Leslee Chapman
Zoning Coordinator
Town of Fort Myers Beach
2523 Estero Blvd.
Fort Myers Beach, FL 33931

Re: Purtell/Paine Rezoning (FMBREZ 2011-0001)

Dear Leslee:

You have requested that we provide a further analysis of the compliance of this zoning application with Policy 4-B-6, the definition of the "Pedestrian Commercial" land use category, and specifically the last sentence of this policy which reads as follows:

Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The source of these numbers can be found on Tables 4-8 and 4-9 of the Future Land Use Element. Table 4-8 indicates that there were 77.8 acres in the Pedestrian Commercial land use category in 1999. With the addition of the Paine/Purtell property to this district in 2010, that total would now be 78.1 acres. Table 4-9 indicated that the total of non-residential uses in that district in 1999 was 45.8 acres, or 58.9% of the total. Since the Paine/Purtell property is currently residential, the new percentage would be 58.6% non-residential.

The net effect of this would be that whereas Table 4-9 indicated that up to 24.2 acres could be converted to non-residential uses before the 90% cap was reached, the new number for allowable additional non-residential uses since 1999 would be 24.5 acres with the addition of the Purtell/Paine property.

We still believe that the proper time to perform this analysis is when a specific plan of redevelopment is submitted and the actual proposed mix of residential/non-residential uses of the

property can be determined. There are other requirements in 4-B-6 that will have to be enforced at the development order stage, such as the following language:

Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors.

Since this direction could only be reviewed and enforced at the development order stage, it is not unreasonable to suggest that the "90%" rule should be reviewed at that time as well. Nevertheless, we will submit the following brief analysis to assess the current situation.

It is clear from the discussion in the plan that hotels, civic uses and park land would be considered "non-residential." At the same time, since the criteria is measured in acres, any building that contains a residential apartment will be considered "residential." This review will not attempt to verify the accuracy of the original inventory contained in Table 4-9, but will assume that the objective is to show that something less than 24.5 acres has been converted from residential to non-residential since 1999.

There have been several new developments in the Pedestrian Commercial land use district since 1999, but in most cases, a new commercial use has replaced a previous commercial use. This type of change would be a "wash" and not affect the mix one way or the other. Examples of this would be Nervous Nellie's, the Yucatan Beach Stand, Zushi Zushi, or the Surf Club. The Harbor House is something of a special case, being a condo hotel, but it replaced the Dockside Bar and would be most likely considered commercial and therefore also a wash.

In a different category, but with the same result, are the several hotels on the beach that were destroyed by Hurricane Charley. As hotels they would be considered non-residential, and now as County park land, they remain non-residential, so a wash.

One place where there has been a reduction in residential use is Helmerich Plaza, now part of the Seafarer's CPD. There used to be a mixed use building at the rear of the property (Strap # 24-46-23-W3-002050070) which was torn down several years ago and is now a parking lot. This parcel is 10,902 sq. ft that would be a deduction from the residential use. Likewise, there are two parcels on Crescent Street which are now vacant, but which previously had residential uses, namely 150 and 300 Crescent Street, for a total of 22,287 sq. ft. These three parcels together would total 33,189 sq. ft., or .76 acre.

The bottom line is that there would now be 46.56 acres of non-residential land use, or 59.6% of the Pedestrian Commercial land use district, up from 58.9% in 1999. The Downtown zoning

Ms. Chapman
Page 3
January 30, 2012

district would in theory allow new commercial development along Estero Blvd. with a Floor Area Ratio of up to 1.4. Since there are approximately 14,300 sq. ft. in the Paine/Purtell property, this would allow up to 20,000 additional sq. ft. of commercial in the unlikely event that the property was developed to its allowable maximum with no residential component. This would increase the non-residential acreage to 47.02 acres, or 60.1%, which is less than 90%.

I hope that this analysis satisfies your concern with Policy 4-B-6. Please do not hesitate to call me if you have any questions.

Very truly yours,

KNOTT EBELINI HART



Michael E. Roeder, AICP
Director of Zoning and Land Use Planning

MER:pw

cc: Fred Paine
James Purtell

FEB 28 2012

RECEIVED BY

NEWS-PRESS

Published every morning - Daily and
Sunday

Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared

Kathy Allebach

who on oath says that he/she is the

Legal Assistant of the News-Press, a daily newspaper,
published at Fort Myers, in Lee County, Florida; that the
attached copy of advertisement, being a

Notice of Public Hearing

In the matter of:

Hearing on March 13, 2012

In the court was published in said newspaper in
the issues of

February 25, 2012

Affiant further says that the said News-Press is a paper of
general circulation daily in Lee, Charlotte, Collier, Glades and
Hendry Counties and published at Fort Myers, in said Lee
County, Florida and that said newspaper has heretofore been
continuously published in said Lee County; Florida, each day,
and has been entered as a second class mail matter at the post
office in Fort Myers in said Lee County, Florida, for a period of
one year next preceding the first publication of the attached
copy of the advertisement; and affiant further says that he/she
has neither paid nor promised any person, firm or corporation
any discount, rebate, commission or refund for the purpose of
securing this advertisement for publication in the said
newspaper.

Sworn to and subscribed before me this 27th day of
February 2012.

by **Kathy Allebach**

personally known to me or who has produced

as identification, and who did or did not take an
oath.

Notary Public

Print Name **Shawnmarie Pitts**

My commission Expires: **March 15, 2013**

NOTARY PUBLIC-STATE OF FLORIDA
Shawnmarie Pitts
Commission #DD870574
Expires: MAR. 15, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

**NOTICE OF PUBLIC
HEARING**

Notice is hereby
given that the Local
Planning Agency of
the Town of Fort
Myers Beach will
hold a public hearing
at a meeting begin-
ning at 9:00 AM on
MARCH 13, 2012 re-
garding the case list-
ed below. This hear-
ing will take place in
the council chambers
at Fort Myers Beach
Town Hall, 2523
Estero Boulevard
Fort Myers Beach,
Florida, 33931.

You may appear in
person, through
counsel, or through
an authorized agent
and provide testimo-
ny, legal argument,
or other evidence to
become a participant
in the hearing.

At this hearing the
Local Planning Agen-
cy of Fort Myers
Beach will review the
cases and make rec-
ommendations to the
Town Council. If any
person should choose
to appeal a decision
made at this public
hearing, such person
would need a record
of the proceedings,
and for that purpose
may need to ensure
that a verbatim re-
cord of the proceed-
ings is made, which
record indicates the
testimony and evi-
dence upon which
the appeal is to be
based.

Copies of the staff
report are available
at Fort Myers Beach
Town Hall. Call 239-
765-0202 for more in-
formation. Town
Hall is open between
the hours of 8:30 AM
and 4:30 PM. Reason-
able accommoda-
tions will be made in
accordance with the
Americans with Disa-
bilities Act. If you
are in need of reason-
able accommoda-
tion, contact Town
Hall at 239-765-0202.

Case Number:
FMBSEZ2011-0001
Case Name:
Paine/Purtell
Rezoning

Applicant:
Mike Roeder, author-
ized applicant
Request:

A rezoning of 821 and
831 Estero Boulevard
from RESIDENTIAL
CONSERVATION
(RC) to DOWNTOWN
Location:

821 and 831 Estero
Boulevard Fort
Myers Beach, Flori-
da 33931

Staff Report:
Inquire at Fort
Myers Beach Town
Hall, 239-765-0202
2523 Estero Boule-
vard Fort Myers
Beach, Florida 33931
Michelle D. Mayher
Town Clerk
Feb. 25 No. 1449521