

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 03-20

WHEREAS, Enercon Companies, L.L.C. in ref. to Key West Courtyard, has requested to rezone a 15 unit motel on 0.5 acres from the Commercial Resort (CR) zoning district to Residential Planned Development (RPD) to redevelop 4 residential dwelling units; and,

WHEREAS, the subject property is located at 4960 Estero Blvd., Ft. Myers Beach, and the applicant has indicated the property's STRAP number is: 28-46-24-W4-00011.0000, and the legal description is marked as Exhibit A (RPD zoning district boundary) and Exhibit B (overall subject property), which exhibits are attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) who recommended that the Town Council approve the Applicant's request for rezoning from commercial resort (CR) to Residential Planned Development (RPD), with the attached conditions and deviations; and

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exists an error or ambiguity which must be corrected.
- b. Whether there exist changed or changing conditions which make approval of the request appropriate.
- c. The impact of a proposed change on the intent of Chapter 34, Zoning Districts, Design Standards, and Nonconformities.
- d. The testimony of any applicant.
- e. The recommendation of staff and of the local planning agency.
- f. The testimony of the public.
- 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.
- h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.

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

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.

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.

NOW THEREFORE BE IT RESOLVED THAT THE town council finds that the requested zoning district complies with:

a. The Fort Myers Beach Comprehensive Plan.

b. Chapter 34, Zoning Districts, Design Standards, and Nonconformities

c. Any other applicable town ordinances or codes.

d. The proposed use or mix of uses is appropriate at the subject location;

e. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations;

f. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

g. The proposed use meets/ ~~does not meet~~ all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policy 4-C-4 on building heights taller than the standard height limit.

2..Policy 4-C-8 on density transfers.

3.Policy 4-E-1 on pre-disaster buildback.

4.Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

THEREFORE THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

#### **CONDITIONS AND DEVIATIONS**

##### **A. Conditions**

1. The development of this project is a rezoning of 0.37 acres of land from Commercial Resort (CR) to Residential Planned Development (RPD), with deviations, to allow the conversion and redevelopment of an existing 15 unit motel on the Gulf beach to a four (4) unit residential condominium, as conditioned. Prior to and in conjunction with this approval, the Master Concept Plan (MCP) must be revised to reflect these modified conditions and deviations. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

2. The following limits apply to the project and uses:

a. **Schedule of Uses:**

Dwelling Units, Single Family or Multiple Family (limited to four (4) total units)  
Essential Services

b. **Site Development Regulations:**

- (1) All property development regulations for the Residential Multi-family (RM) zoning district except as modified or eliminated by specifically approved deviations or conditions.
- (2) All buildings must be separated a distance no less than ten (10) feet measured from the exterior walls.

3. **Environmental Conditions:**

a. **Seawall:**

The existing seawall must remain in place until such time as the seawall on both abutting properties is removed. The owner must cooperate with the Town of Fort Myers Beach to remove the seawall on the subject property at the owner's expense at such time as the seawall on the abutting properties is removed. Prior to the issuance of any additional development approval, the owner must execute a beach renourishment easement. See Dune Restoration below for specific conditions.

b. **Exotics:**

All exotic vegetation is to be removed from the site, including but not limited to the Australian pines and schefflera along the south property line along the beach access and the Cuban laurel tree along Estero Boulevard. A condition should be included to maintain the property free of exotic vegetation in perpetuity.

c. **Drainage:**

All drainage, including the pool overflow, must be designed to drain away from the beach and not onto it.

**d. Sea Turtle Lighting - See LDC 14-76:**

1. All existing lights along the fence, in the landscaping, around the pool, at the seawall, and seaward of the building must be removed. All lighting on the property must be in compliance with LDC 14-76.
2. A lighting plan must be submitted to Lee County Division of Environmental Sciences (ES) for review and approval prior to the earlier of building permit or development order issuance. Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat. See LDC Section 14-78 (c). If a local development order will not be needed, a site lighting plan must be included with the MCP. Building lighting must be addressed in the building permit application. The location, number, wattage, elevation, orientation and all types of proposed lighting sources must be included on the lighting plan.

**e. Dune Restoration Plan:**

1. The location of the dune restoration must be shown on the MCP and conditioned and approved on the development order. If a development order is not needed, the dune restoration must be conditioned and approved on the MCP.
2. A detailed dune planting plan for the creation and planting of the vegetated dune area must be submitted to and approved by ES staff. The dune planting area must include a minimum of four different native dune plant species with sea oats as the dominant species planted 1.5 feet on center. The dune planting plan must include design of the contouring of the dune, the quantity of plants by species, the container size of plants, the density of planting (based on size of plant material), installation guidelines and maintenance guidelines.
3. A dune walkover that is a maximum of four feet (4') in width must be depicted on the MCP and the dune planting plan. Prior to construction of any improvements on-site, permits must be obtained from Lee County and Florida Department of Environmental Protection Office of Beaches and Coastal Systems.
4. Only temporary above ground irrigation may be installed, which must be removed no later than one year from the date of planting.

5. To allow the plants to become established, the dune restoration area will be temporarily fenced with ropes and bollards for a period of no more than one year.
  6. A final inspection by ES staff is required when the planting has been completed. The planting must be completed no later than 60 days after the adjacent beach renourishment is accomplished.
  7. The planting area must be maintained free of all exotic and nuisance vegetation in perpetuity without disturbing the existing native dune vegetation. Any planted native vegetation that dies must be replaced within 60 days.
  8. An annual monitoring report describing the conditions of the restored area must be submitted to ES staff for review and approval for five years following the completion of the restoration. Photos documenting the conditions of the restored area must accompany the monitoring report. Photo locations should be the same throughout the duration of the monitoring report. The monitoring report must be submitted on or no greater than 30 days before each anniversary date of the completion of the restoration planting. Failure to submit the report in a timely manner will constitute a violation. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, ES staff will periodically inspect the restoration.
  9. The dune restoration will be coordinated with and integrated with the Town of Fort Myers Beach's beach renourishment project.
  10. A permit from the Florida Department of Environmental Protection, Office of Beaches and Coastal Systems, is required prior to conducting any work beyond the CCCL, including the addition of sand to create the dune.
4. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
  5. Approval of this rezoning does not give the Developer an undeniable right to receive local development order approval. Future development order approvals must satisfy the requirements of the Town of Fort Myers Beach Comprehensive Plan.
  6. The project must be developed as a four (4) unit condominium and no subdivision of the subject property is approved by this planned development zoning district.

7. The total interior square footage of the new residential units must not exceed 8,650 square feet.
8. Prior to execution by the Mayor, Applicant must revise the MCP to address the modifications adopted by Town Council.

**B. Deviations:**

- A. **WITHDRAWN**
- B. **WITHDRAWN**
- C. A deviation from the Section 10-285(a) Table 1 requirement for connection separation of 660 LF along arterial roads to allow the established driveway location as shown on the Master Concept Plan. The separation to the northwest is approximately 89' and 56' to the southeast. This deviation is **APPROVED**.
- D. A deviation from the Section 10-296(m)(4)(b) that privately maintained accessways shall not be required to meet the minimum right-of-way widths specified in Subsection (b) of this section if they: a) provide vehicle access to 50 or fewer residential units; b) meet the dimensional requirements for parking lot accesses and aisle; c) provide for utility easements per Section 10-355(a)(1) to allow a 12' wide ingress/egress easement to access four single family homes and to utilize the easement for utilities as requested in Deviation E. This deviation is **APPROVED. The MCP must be modified as discussed in the Staff Report and at the public hearings.**
- E. A deviation from Section 10-355(a)(1) that all new roads or accessways in proposed developments shall provide a minimum 10' wide utility easement on both sides of the road or accessway to allow the 12' ingress/egress easement to function as a utility easement also. This deviation is **APPROVED**.
- F. **DENIED. It is the determination of the Town Council that the subject property not be subdivided.**
- G. **DENIED. It is the determination of the Town Council that the subject property not be subdivided.**
- H. A deviation from the Side - Waterfront lot setback requirements of LDC Section 34-943(2) and Table 34-3 requiring a side setback on waterfront lots of 7.5 feet to allow a side setback of 5.2 feet on the southeastern property line. This deviation is **APPROVED**.
- I. THROUGH L. **DENIED. It is the determination of the Town Council that the subject property not be subdivided.**

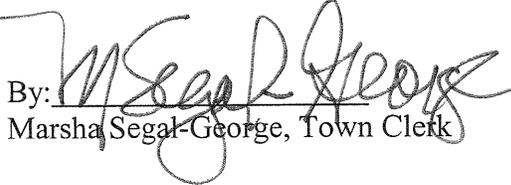
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

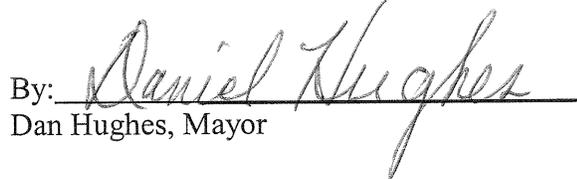
Howard Rynearson	Aye
Daniel Hughes	Aye
Bill Thomas	Aye
W. H. "Bill" Van Duzer	Aye
Terry Cain	Aye

APPLICATION DULY GRANTED/~~DENIED~~ this 9th day of June, 2003.

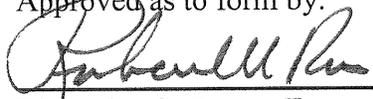
ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

By:   
Dan Hughes, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney



Bean, Whitaker, Lutz & Kareh, Inc.

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Fort Myers, Florida 33919-5910  
email - fmoffice@bwlk.net  
(Ph) 239-481-1331 (Fax) 239-481-1073

RECEIVED

MAR 14 2003

EXHIBIT A

Description  
Parcel Lying in  
Section 28, Township 46 South, Range 24 East  
Town of Fort Myers Beach, Lee County, Florida  
COMMUNITY DEVELOPMENT

(The following Description is for Zoning Purposes Only, As it does not include the entire Parcel)

A tract or parcel of land lying in Section 28, Township 46 South, Range 24 East, Town of Fort Myers Beach, Lee County, Florida, being further described as follows:

From the southeast corner of the Southwest One Quarter (SW 1/4) of said Section 28, run westerly along the south line of said section for 1643.7 feet to the northwesterly corner of Lot 20, Block 6 of Gulf Heights Subdivision as recorded in Plat Book 6 at Page 39 of the Lee County Public Records; thence run northwesterly at an angle of 139°39' east to northwest for 646.25 feet; thence run northeasterly at an angle of 92°00' southeasterly to northeasterly along the Southeasterly line of lands described in Official Record Book 1669, Page 597 of said Lee County Records for 231.68 feet to a concrete monument marking the northeast corner of lands described in Official Record Book 1669 at Page 597 and the Point of Beginning.

From said Point of Beginning run N50°37'34"W along the southwesterly line of Estero Boulevard (57.5 feet wide) for 90.18 feet to a concrete monument marking the northwesterly corner of said lands; thence run S37°44'31"W along the Northwesterly line of said lands for 180.54 feet to an intersection with the Lee County Coastal Control Set-Back Line; thence run S49°53'52"E along said line for 90.21 feet to an intersection with a line bearing S37°44'31"W and passing through the Point of Beginning; thence run N37°44'31"E along the Southeasterly line of said described parcel in Official Record Book 1669 at Page 597 for 181.72 feet to the Point of Beginning.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone N.A.D. 1983 (1990 Adjustment) having the northeasterly line of said parcel to bear N50°37'34"W.

Containing 16,310 square feet or 0.37 acres, more or less.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

  
William E. Bean, R.L.S. 3261

33743DESC1

3/14/03

DCI 2003-00006

Sheet 1 of 2

PRINCIPALS:

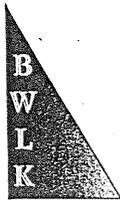
- WILLIAM E. BEAN, PSM, CHAIRMAN
- SCOTT C. WHITAKER, PSM, PRESIDENT
- JOSEPH L. LUTZ, PSM

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:

- CHARLES D. KNIGHT, PSM
- ELWOOD FINEFIELD, PSM
- TRACY N. BEAN, AICP
- W. BRITT POMEROY, JR., PSM



# Bean, Whitaker, Lutz & Kareh, Inc.

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(Ph) 239-481-1331 (Fax) 239-481-1073

## EXHIBIT B

Description  
Parcel Lying in

Section 28, Township 46 South, Range 24 East  
Town of Fort Myers Beach, Lee County, Florida

JAN 29 2003

A tract or parcel of land lying in Section 28, Township 46 South, Range 24 East, Town of Fort Myers Beach, Lee County, Florida, being further described as follows:

From the southeast corner of the Southwest One Quarter (SW 1/4) of said Section 28, run westerly along the south line of said section for 1643.7 feet to the northwesterly corner of Lot 20, Block 6 of Gulf Heights Subdivision as recorded in Plat Book 6 at Page 39 of the Lee County Public Records; thence run northwesterly at an angle of 139°39' east to northwest for 646.25 feet; thence run northeasterly at an angle of 92°00' southeasterly to northeasterly along the Southeasterly line of lands described in Official Record Book 1669, Page 597 of said Lee County Records for 231.68 feet to a concrete monument marking the northeast corner of lands described in Official Record Book 1669 at Page 597 and the Point of Beginning.

From said Point of Beginning run N50°37'34"W along the southwesterly line of Estero Boulevard (57.5 feet wide) for 90.18 feet to a concrete monument marking the northwesterly corner of said lands; thence run S37°44'31"W along the Northwesterly line of said lands for 248.79 feet to an intersection with the Estero Island Erosion Control Line as recorded in Plat Book 70 at Pages 25 through 39 of said public records; thence run S50°57'15"E along said line for 87.16 feet; thence run S50°51'07"E along said line for 3.01 feet to an intersection with a line bearing S37°44'31"W and passing through the Point of Beginning; thence run N37°44'31"E along the Southeasterly line of said described parcel in Official Record Book 1669 at Page 597 for 248.28 feet to the Point of Beginning.

Bearings hereinabove mentioned are Plane Coordinate for the Florida West Zone N.A.D. 1983 (1990 Adjustment) having the northeasterly line of said parcel to bear N50°37'34"W.

DCI 2003-00006

Containing 22,400 square feet or 0.51 acres, more or less.

Bean, Whitaker, Lutz & Kareh, Inc. (LB 4919)

William E. Bean, R.L.S. 3261

33743DESC1

1/21/03

EXHIBIT  
11-B-2

EXHIBIT  
11-B-1

PRINCIPALS:

WILLIAM E. BEAN, PSM, CHAIRMAN  
SCOTT C. WHITAKER, PSM, PRESIDENT  
JOSEPH L. LUTZ, PSM  
LAWRENCE B. KAREH, PSM, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYING

Page 1 of 2  
ANNEXES

ASSOCIATES:

CHARLES D. KNIGHT, PSM  
ELWOOD FINEFIELD, PSM  
TRACY N. BEAN, AICP  
W. BRITT POMEROY, JR., PSM