



# SPIKOWSKI PLANNING ASSOCIATES

## MEMORANDUM

**TO:** Town Council, Town of Fort Myers Beach  
**FROM:** Bill Spikowski  
**DATE:** March 28, 2018  
**SUBJECT:** Addendum to Report on TPI-FMB Rezoning Request

This memorandum is an addendum to the 85-page report on the TPI-FMB Commercial Planned Development rezoning request that was released on January 26, 2018.

I prepared that report as a consultant to the Town, with considerable assistance from staff and other consultants to the Town. The recommendations in that report were identified as “staff recommendations” because at that time we didn’t anticipate there being a separate staff report. In a few matters, the January 26<sup>th</sup> report provides opinions and recommendations that differ from supplemental staff reports that were released later; in those cases, the opinions and recommendations in the January 26<sup>th</sup> report are mine alone.

This addendum modifies the January 26 report, as described below.

### — UPDATES TO APPLICATION SUMMARY & NARRATIVE —

**PAGE 2:** STRAP numbers were listed on page 2 for all lots affected by this application:

One lot in Parcel 1 was listed incorrectly: ~~24-46-23-W3-00205.0060~~

The correct STRAP number for this lot is : 24-46-23-W3-00206.0050

**PAGES 34–37:** These pages discussed the Traffic Impact Statement (TIS) submitted by the applicant on January 23, 2018. In response to technical comments from the Town’s engineering consultant Tetra Tech, the applicant submitted an amended TIS on March 5, 2018.

These amendments resulted in minor changes to most of the traffic numbers reported on pages 34 to 37. As an example, the anticipated increases in traffic at Donora Boulevard during peak periods had been estimated at 0.4% to 2.0% of total traffic (see page 37); the amended TIS estimates the increases in traffic there at 0.4% to 2.5%.

Tetra Tech’s latest memo of March 16 disputes some of the analytical methods in the TIS and suggests that the traffic increases would be higher if Tetra Tech’s methods were used.

— **UPDATES TO PROPOSED CONDITIONS** —

**CONDITION 6** (pages 46 and 61–62): Condition 6 contains the schedule of uses. Two changes are suggested to Condition 6 in order to clarify public use of the beach club and to eliminate the final paragraph regarding “Parcel 2B.”

The applicant has committed to limiting public use of the beach club to 225 people per day. The schedule of uses should reflect that limitation; wording is suggested below.

Parcel 2B is 0.33 acres that is currently zoned EC (Environmentally Critical) and is separated from the main beach by an existing seawall. The landward boundary of the EC zoning district (and of the “Recreation” category on the Future Land Use Map) follows the 1978 Coastal Construction Control Line. The seawall was constructed much earlier; the wall itself, and the 0.33 acres of higher ground it protects, jut into the EC district and Recreation category.

The applicant requested that Parcel 2B be included in the CPD rezoning and be shown on the Master Concept Plan. All existing structures and pavement would be removed and the land would become part of the beach club; no new structures or paving would be allowed.

The current wording in Condition 6 would approve the applicant’s request but would regulate Parcel 2B the same as if it were still zoned EC.

To avoid creating a precedent for rezoning EC (and Recreation) land to any other zoning district, I am now recommending that Parcel 2B be excluded from the CPD and retain its current EC zoning. Parcel 2B would still be shown on the Master Concept Plan to illustrate its proposed use as a completely unpaved portion of the beach club.

Here is the wording that would make these two changes to **Condition 6**:

**GULF SIDE** (Parcel 2)

**RETAIL**

**Recreation Facilities, Commercial** (limited to 225 people per day who are not staying at the hotel)

~~**PARCEL 2B:** Uses on Parcel 2B shall be limited in the same manner as would be provided by the “Environmentally Critical” zoning district. The LDC contains other regulations that will apply here, such as restrictions on minor structures in 6-366, on beach furniture in 14-5, on lighting in 14-76 and 14-79, on personal watercraft and parasailing in chapter 27, on signs in 30-93, on zoning in 34-652, on alcoholic beverages in 34-1264, on dunes in 34-1575, and on equipment rentals in 34-3151.~~

In addition to the change to Condition 6, this approach would require certain other changes to the plan sheets, beginning with modifying the boundary sketch and legal description on sheet X-103-BNDY.

**CONDITION 7** (page 62): During the LPA public hearing, the accuracy of the opening sentence of Condition 7 was questioned; it refers to “**4.78 acres** landward of the 1978 coastal construction line.” That acreage total was derived from figures on page 2 of the report as follows:

- Parcel 1: 2.79 acres (Parcel 1)
- Parcel 2: 1.74 acres (Parcel 2, less 0.33 acres for Parcel 2B)
- Parcel 3: 0.21 acres (Parcel 3)
- Right-of way: 0.04 acres (5.11 CPD acres, including bridges, less 5.07 project acres)  
**4.78 acres**

The 4.78-acre figure in Condition 7 is correct; it excluded the 0.33 acres in Parcel 2B, which was to be part of the CPD but is not “landward of the 1978 coastal construction control line.”

The changes to Condition 6 that would delete Parcel 2B from this rezoning do not require any changes to Condition 7.

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**CONDITION 8** (pages 63–64): Condition 8 contains general language about the effect of rezoning to CPD and then lists all the plan sheets that would be included in the CPD approval.

Certain plan sheets are being excluded by not appearing on this list, such one sheet that shows proposed signs and another sheet that shows existing and proposed beach furniture rentals, parasailing, and personal watercraft rentals.

Many of the sheets would need to be revised before final approval to reflect a smaller CPD boundary due to the deletion of Parcel 2B and to reflect any other changes the Town Council determines appropriate at its first public hearing. The actual wording of **Condition 8** does not need to be changed at this time except to delete the final two lines:

~~*underlined sheets have been or are being modified to update sheets submitted in November 2017*~~

Immediately after the first public hearing, Town staff and consultants would identify exactly which changes are needed and would later review the adjusted plan sheets prior to scheduling the final public hearing. At the final public hearing, the Town Council would review the entire package and adopt an ordinance that would include its final decisions on the rezoning, on the conditions of approval, and on the content of the plan sheets that would be approved with the CPD.

**CONDITION 10** (pages 32 and 64–65): Condition 10 addresses the proposed vacations of portions of Canal Street and Crescent Street and the applicant’s offer to donate and improve a new pedestrian beach access and a new beach parking lot.

Since this condition was drafted, town staff has requested design review over the pedestrian access and has indicated a clear preference for the beach parking lot to be an actual street that would include sidewalks as well as public parking spaces. Adding sidewalks would require a rectangular parcel with 80 feet of frontage on Estero Boulevard, which is larger than the parking lot shown on the Master Concept Plan and would reduce the size of the beach club slightly.

**Condition 10** would be clearer if the language after the first bullet were reworded as follows:

- *As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of-way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of town-maintained Beach Access #36. Understanding that the town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating an expanded Parcel 2C to the town after constructing a new beach access plus a new public parking lot that contains at least 23 parking spaces and meets all LDC requirements including buffers and landscaping, or that contains a new public street on 80 feet of new right-of-way beginning at Estero Boulevard on the same land, at the Town Council's option; and by constructing and donating a new perpetual pedestrian beach access just west of Crescent Street that meets ADA accessibility requirements and the Town Manager's specifications as to surfacing.*

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**CONDITION 11** (pages 33 and 65): Condition 11 provides details about the proposed beach club. The LPA motion included a change to the second bullet regarding the fence along Estero Boulevard; the applicant concurs with this change. Thus the second bullet in **Condition 11** should be worded as follows:

- *Any perimeter fence on the beach side of Estero Boulevard must be at least ~~80%~~ 20% transparent, must be placed within a landscaped planting area at least 5 feet wide, and may not exceed 3 feet in height. If the Florida Building Code requires a taller fence at this location, the fence height may be increased accordingly ~~provided the increased height is at least 80% transparent~~.*

**CONDITION 17** (pages 52 and 67): Condition 17 would accept the applicant's proposals for consumption of premises, which are shown on sheets X-506 and X-507 of the proposed Master Concept Plan. These proposals would allow alcohol service as follows:

On Parcel 1, alcohol would be served in a lobby bar in the main resort building, at two outdoor locations on the elevated courtyard, and in the rooftop event space.

On Parcel 2, alcohol would be served in the beach-side restaurant and outdoors at the pool bar in the beach club. Alcohol would not be served on the beach below the seawall.

Alcohol would be served in the meeting area on the third story of Parcel 3.

If the Town Council approves CPD rezoning, it may choose (but is not required) to approve locations for the sale of alcohol at this time. The Town Council has several options:

Condition 17 and sheets X-506 and X-507 could be approved as proposed.

Condition 17 and both sheets could be modified, for instance to delay a decision any location where the Town Council is unable to achieve a consensus, or to modify the condition or plan sheets regarding the sale of alcohol at particular locations.

Condition 17 and both sheets could be deleted from the CPD approval.

If the Town Council deletes Condition 17 and both sheets, future decisions on consumption on premises would be handled according to standards in the LDC. The LDC allows some approvals to be granted administratively, such as alcohol sales in hotels and restaurants. Other approvals would require a special exception, such as outdoor seating that is not part of a restaurant; this special exception requirement would apply to the rooftop event space and might apply to the beach club.

If the Town Council chooses to approve **Condition 17** and sheets X-506 and X-507, please note two recommended clarifications to the fourth bullet:

*On-premises consumption of alcoholic beverages is approved at the locations shown on Sheets X-506-COP.01 and X-507-COP.02 of the Master Concept Plan, subject to these limitations:*

- *Alcoholic beverages in the outdoor rooftop event space are limited to special events scheduled through the resort. Permanent structures are not permitted in the rooftop event space.*
- *Outdoor seating is permitted on the second story outdoor deck provided it remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02.*
- *Alcoholic beverages in the beach club are limited to the hours of operation of the beach club (7 am to 9pm or one hour after sunset). Alcoholic beverages are not approved on the sandy beach below the seawall, which retained its EC zoning.*
- *Alcoholic beverages may be served at locations other than those shown on the Master Concept Plan only if approved by special exception or by administrative approval, as provided in 34-1264 of the LDC.*