

1. Requested Motion:

Meeting Date: August 6, 2012

Commercial Planned Development (CPD) Amendment to amend the existing CPD, formerly known as Eckerd's, which was approved in Resolution 97-35.

Why the action is necessary:

This action will allow the applicant to operate from 7:00 AM to 12:00 Midnight

What the action accomplishes:

2. Agenda:

Consent
 Administrative
 Public Hearing

3. Requirement/Purpose:

Resolution
 Ordinance
 Other

4. Submitter of Information:

Council
 Town Staff – Comm. Dev.
 Town Attorney

5. Background:

In 1997, the subject property was rezoned from Tourist Commercial (CT) to Commercial Planned Development (CPD) to allow the construction of the existing commercial building to be used as an Eckerd's drugstore. The rezoning was granted with three deviations and eighteen conditions. Condition #2 is the reason for the subject request, because it limited the hours of operation from 8:00 AM to 9:00 PM.

CVS/pharmacy took over the Eckerd brand nationwide in 2004. This application seeks to amend Condition #2 of the existing CPD, to allow the continued operation of CVS/pharmacy under the hours of operation that have been in existence since CVS/pharmacy took over the subject property in August 2004.

The LPA held a public hearing for the request at their June 12, 2012 meeting. The applicant presented their case then Staff presented its case along with a recommendation for approval. LPA conducted a question and answer period and discussion before voting 6-0 (LPA Member Plummer absent) to approve the request.

Please note that the meeting minutes from the June 12, 2012 LPA meeting are still in draft form at the time of packet assembly. They should be officially adopted at the August 14, 2012 LPA meeting.

Attachments:

- Draft Town Council resolution
- LPA resolution 2012-007
- Draft LPA minutes from the June 12, 2012 meeting
- LPA packet including staff report from the June 12, 2012 meeting

6. Alternative Action:

1. Deny the requested rezoning
2. Approved the requested rezoning subject to alternative conditions

7. Management Recommendations:

Approve the requested amendment to the Commercial Planned Development in accordance with the recommendation of the LPA Resolution 2012-007.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

Approved Denied Deferred Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 12-10
CVS/Pharmacy CPD

WHEREAS, Holiday CVS, LLC, owner of property located at 7001 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to Condition #2 of Resolution 97-35 for the existing Commercial Planned Development (CPD), formerly known as Eckerd's, to allow hours of operation from 7:00 AM to 12:00 Midnight; 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 properties are 03-47-24-W1-00007.0000; and

WHEREAS, the legal description for the property is attached as **Exhibit A**; and

WHEREAS, the Town Council, on October 20, 1997, adopted Resolution 97-35 which rezoned the subject property from Tourist Commercial (CT) to Commercial Planned Development (CPD); and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 12, 2012 at which time the LPA gave full and complete consideration to the CPD amendment requested by the Applicant, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on August 6, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-007, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2012-007 and the standards for granting planned development rezoning, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for an amendment to the existing CPD, formerly known as Eckerd's, to allow hours of operation to continue from 7:00 AM to 12:00 Midnight.

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 planned development zoning approval, the Town Council makes the following findings and reaches the following conclusions:

1. *An error or ambiguity **does not** exist which must be corrected.*
There is no error or ambiguity to be corrected by the requested amendment to Condition #2 of Resolution 97-35.
2. *Changed or changing conditions **do** exist which make approval of the request appropriate.*
The major change that has taken place is that this is now an established business on Fort Myers Beach, operating as a pharmacy/drugstore since 1998. CVS/pharmacy has operated from this location since August 2004. Also, in 2005, the neighboring property to the east was purchase by the Fort Myers Beach Fire Control District, and Fire Station 33 was constructed on the adjacent parcel. Therefore, there is no long a potentially noise- or time-sensitive use adjacent to the subject property. Since the CVS/pharmacy began operating in August 2004, there have been no complaints about the expanded hours of operation.
3. *There **will not** be an impact from the proposed change on the intent of Chapter 34.*
The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34.
4. *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.*
Resolution 97-35 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Pedestrian Commercial Future Land Use category, the highest-intensity land use category on Fort Myers Beach.
5. *The request **meets or exceeds** all performance and locational standards set forth for the proposed use.*
Resolution 97-35 found the requested CPD zoning to be in compliance with all performance and locational standards
6. *Urban services **are** available and adequate to serve a proposed land use change.*
Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along both street frontages.
7. *The request **will** protect, conserve, or preserve environmentally critical areas and natural resources.*
Resolution 97-35 found that the requested CPD zoning protects, conserves and preserves environmentally critical areas and natural resources.
8. *The request **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance, or other detriment to persons or property.*
The requested hours of operation will be compatible with existing uses and will not cause damage, hazard, nuisance or other detriment to persons of nearby property. The CVS/pharmacy has operated at the subject location for more than 7 ½ years with the requested hours of operation, without so much as one complaint from a nearby property owner. The complaint that led to the Code Enforcement case CE12-0050 allegedly came from a disgruntled employee, not an affected property owner nearby.

9. *The location of the request **will not** place 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.*

The request will not place any burden on the transportation network or other facilities. In fact, the request may alleviate some burden on Estero Boulevard because customers will be able to access the CVS/pharmacy outside of the congested peak hours.

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

- a. *The proposed mix of uses **is** appropriate at the subject location*
- b. *Sufficient safeguards to the public interest **are** provided by the recommended special conditions to the concept plan or by other applicable regulations.*
- c. *All recommended special conditions **are** reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
- d. *The proposed use meets all specific requirements of the comprehensive plan that **are** relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

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

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

DULY PASSED AND ADOPTED THIS 6th day of AUGUST, 2012.

Town Council of the Town of Fort Myers Beach

By: _____
Larry Kiker, Mayor

Approved as to legal sufficiency:

ATTEST:

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

By: _____
Michelle Mayher
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2012-007
FMBDCI2012-0002
CVS/pharmacy CPD Amendment

WHEREAS, Holiday CVS, LLC, owner of property located at 7001 Estero Boulevard, Fort Myers Beach Florida has requested an amendment to expand the approved hours of operation in the existing CPD, formerly known as Eckerd Drugs, to allow CVS/pharmacy to operate from 7:00AM to 12:00Midnight; 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 applicant has indicated that the STRAP for the subject property 03-47-24-W1-00007.0000 and the legal description is provided as follows:

A parcel of land in government lot 1, Section 3, Township 47 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the point of intersection of the Easterly right-of-way line of Estero Boulevard (S.R. No. 865, 80.00 feet wide) with the South line of said Government Lot 1; thence North 18°34'20" West for 63.00 feet to the Point of Beginning of the herein described parcel of land;

From said Point of Beginning; thence continue North 18°34'20" West for 209.51 feet; then North 89°11'00" East for 306.70 feet; thence South 00°49'00" East for 199.53 feet to an intersection with the Northerly right-of-way of Lenell Road (60.00 feet wide) as described in O.R. Book 849, Page 282 of the Public Records of Lee County, Florida; thence South 89°11'00" West along said right-of-way line for 242.81 feet to the Point of Beginning; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on June 12, 2012; and

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

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for an amendment to Condition #2 of Resolution 97-35 to change the permitted hours of operation from the previously approved 8:00 AM to 9:00 PM to 7:00 AM to 12:00 Midnight.

RECOMMENDED FINDINGS AND CONCLUSIONS:

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

There is no error or ambiguity to be corrected by the requested amendment to Condition #2 of Resolution 97-35. **APPROVE**

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

The major change that has taken place is that this is now an established business on Fort Myers Beach, operating as a pharmacy/drugstore since 1998. CVS/pharmacy has operated from this location since August 2004. Also, in 2005, the neighboring property to the east was purchased by the Fort Myers Beach Fire Control District, and Fire Station 33 was constructed on the adjacent parcel. Therefore, there is no longer a potentially noise- or time-sensitive use adjacent to the subject property. Since the CVS/pharmacy began operating in August 2004, there have been no complaints about the expanded hours of operation. **APPROVE**

3. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34. **APPROVE**

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

Resolution 97-35 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Pedestrian Commercial Future Land Use category, the highest-intensity land use category on Fort Myers Beach. **APPROVE**

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

Resolution 97-35 found the requested CPD zoning to be in compliance with all performance and locational standards. **APPROVE**

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

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along both street frontages. **APPROVE**

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

Resolution 97-35 found that the requested CPD zoning protects, conserves and preserves environmentally critical areas and natural resources. **APPROVE**

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.*

The requested hours of operation will be compatible with existing uses and will not cause damage, hazard, nuisance or other detriment to persons or nearby property. The CVS/pharmacy has operated at the subject location for more than 7 ½ years with the requested hours of operation, without so much as one complaint from a nearby property owner. The complaint that led to the Code Enforcement case CE12-0050 allegedly came from a disgruntled employee, not an affected property owner nearby. **APPROVE**

9. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. In fact, the request may alleviate some burden on Estero Boulevard because customers will be able to access the CVS/pharmacy outside of the congested peak hours. **APPROVE**

10. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*
2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*
4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

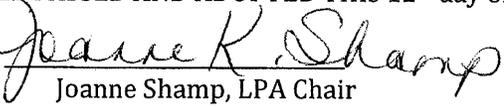
The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan. **APPROVE**

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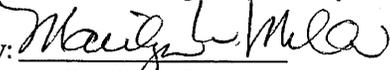
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Andre** and seconded by LPA Member **Zuba**, and upon being put to a vote, the result was as follows:

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

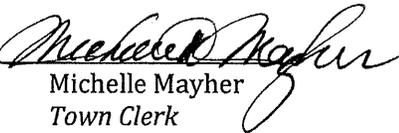
DULY PASSED AND ADOPTED THIS 12th day of JUNE 2012.

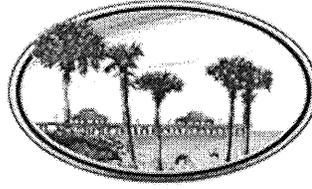
By: 
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: 
Fowler, White, Boggs
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
June 12, 2012

I. CALL TO ORDER

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

Dan Andre
Al Durrett
John Kakatsch
Jane Plummer (Excused)
Alan Smith
Hank Zuba

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

II. PLEDGE OF ALLEGIANCE

III. INVOCATION – Hank Zuba

IV. MINUTES

A. Minutes of April 10, 2012

MOTION: Mr. Zuba moved to approve the April 10, 2012 minutes; second by Mr. Smith.

Mr. Zuba noted a typographical error on Page 8, Paragraph 6.

VOTE: Motion passed 6-0. Ms. Plummer excused.

V. PUBLIC HEARING

A. REZ2011-0001 – Paine/Purtell Rezoning

Ms. Shamp opened the hearing at 9:04 a.m.

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

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

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

Ms. Alexis Crespo of Waldrop Engineering representing the applicant, Messrs. Paine and Purtell, noted they were unable to attend the meeting; however, Brady Paine was in attendance (Mr. Paine's son) and he could provide history regarding the property if necessary. She presented comments for REZ2011-0001 – Paine/Purtell Rezoning for a rezoning request of Residential Conservation to Downtown. She noted the subject property was currently located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan. She displayed an aerial location map of the subject property and discussed the frontage along the arterial roadway, and proximity to the Old Sand Carlos Boulevard, Estero Boulevard, and Times Square, pedestrian-commercial designation. She used a PowerPoint presentation to review the existing condition of the property; the existing uses of the surrounding properties; the subject property as it appeared on the Town of Fort Myers Beach Future Land Use Map (FLUM) and the land use designation for surrounding properties; and the existing zoning designation for the subject property and surrounding properties. She stated the applicant was requesting a logical extension of the Downtown Zoning District to include the subject property and she noted the subject property was the only property fronting on Estero Boulevard within the Lagoon Street block that did not have commercial use at the present time. She reviewed the slides that depicted the types of existing businesses and uses, residential properties, and vacant lots that surrounded or were nearby the subject property. She gave a historical synopsis of the zoning and land use designations and changes for the subject property since 1950. She noted the applicants were able to obtain a Future Land Use Map Amendment in 2010 for the subject property to Pedestrian-Commercial. Ms. Crespo reviewed other specifics of the applicant's zoning request; and noted the area of the town where the subject property was located had sufficient infrastructure to handle the rezoning and the applicant had acquired the appropriate letters to support the request (i.e. letter from Utility Department). She stated the applicant requested a TIS waiver that was approved by the Community Development Director; and discussed how the subject property was in a 'park-once' location. Ms. Crespo reviewed the rezoning request as it pertained to compatibility with the surrounding properties, and compliance with the Comprehensive Plan. She stated the Staff Report indicated the request was consistent with the Town's Growth Management Plan, that it implemented the 2010 Future Land Use Map Change to Pedestrian-Commercial, approved the TIS Waiver, and recommended approval of the rezoning. She indicated that the approval of the request would allow the property's zoning to comply with

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the underlying Residential Commercial Future Land Use Category and requested the LPA approve the rezoning request.

Mr. Smith asked if there was any feedback from the multi-family seasonal rental properties located on Lagoon Street.

Ms. Crespo stated from her conversations with the applicants it was her understanding from that they were supportive of the rezoning.

Mr. Zuba asked why there was no 'redevelopment plan' included in the rezoning request.

Ms. Crespo reported the applicants did not have an immediate redevelopment plan and were trying to regain the previous commercial uses that were allowed for the site at a C-1 designation which would allow for future redevelopment of the property. She noted there was not an 'end-user' at this time.

Mr. Zuba asked if the applicants were positioning the property for sale.

Ms. Crespo responded in the affirmative.

Mr. Zuba asked if there were any code violations on the existing properties.

Ms. Crespo stated that to the best of her knowledge there were none.

Zoning Coordinator Chapman stated she could research the matter.

Discussion was held concerning what was permissible under the current zoning.

Zoning Coordinator Chapman presented comments for REZ2011-0001 – Paine/Purtell Rezoning on behalf of the Town of Fort Myers Beach. She displayed an aerial view of the subject property and reviewed the application for a rezoning of the subject property located at 821 and 831 Estero Boulevard. She noted that the application was a conventional rezoning and described the difference between conventional zoning and a commercial planned development. She explained that the LPA must make a recommendation of approval or denial; and that the approvals could not be conditioned. She indicated the property location on the Future Land Use Map (FLUM) and gave a brief historical background of the property:

- Future Land Use
 - Lee County FLU: Urban Community
 - Town of Fort Myers Beach Adopted the Future Land Use Map in 1999; Mixed-Residential
 - Applicants applied for a Small Scale Map Amendment which was approved in 2010 by Ordinance 10-02 from Mixed Residential to Pedestrian Commercial

She discussed the property location on the Zoning Map and the property's zoning history:

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- Zoning
 - Lee County Zoning C-1
 - Town of Fort Myers Beach adopted the Land Development Code by Ordinance 03-03
 - Town of Fort Myers Beach adopted the Official Zoning Map Resolution 04-16 which zoned the subject property Residential Conservation
 - Applicant has applied to rezone the subject property to Downtown which would allow for a variety of uses that would not require a Development Order

She pointed out considerations with respect to compatibility with surrounding properties; TIS waivers; and land use/zoning consistency. She noted the subject property was located within a six parcel loop that was enclosed by Estero Boulevard and Lagoon Street; and that rezoning the property to Downtown would shift the balance of land uses within the loop from a majority of residential parcels to a majority of commercial parcels. She reported that staff recommended approval of the requested rezoning from Residential Conservation to Downtown.

Mr. Kakatsch asked if the parking area adjacent to the property would remain a parking area and be tied into whatever might develop on the new property.

Ms. Chapman reported that property was a commercial parking lot and there was an opportunity for the two parcels in question, if they were redeveloped, to enter into a joint use agreement.

Discussion ensued regarding the possible development of the commercial parking lot; and challenges to the conventional zoning districts and buffering along the street.

Ms. Shamp questioned the types of uses that could be permitted.

Ms. Chapman stated that any change in use would still have to apply for a Certificate of Use; and noted if there were any proposed changes to the interior/exterior of the building that come up against the 50% Rule could be a limiting factor to redevelopment.

Ms. Shamp asked if the buildings were to be torn down and the rezoning was approved, what number of units would be allowed to be used without going through the CPD process (i.e. height and unit restrictions).

Ms. Chapman responded that it would be less than seven units; and they would have to go up in height due to FEMA (approximately 30 feet above base flood elevation).

Community Development Director Fluegel noted that the Commercial Design Standards would apply if the property was rebuilt; and discussed the applicability of the 50% Rule.

Mr. Zuba noted his concerns regarding buffering for the adjacent properties and increasing density.

Discussion ensued concerning buffering, increased density and intensity, FEMA standards, compatibility concerns, and the existing inconsistency between the future land use and the zoning.

Public Comment opened.

No speakers.

Public Comment closed.

Mr. Andre expressed his belief that it seemed like a logical transition to change the zoning back to what it was when the applicants purchased the subject property.

Mr. Smith agreed with Mr. Andre and pointed out this was an opportunity to correct an inconsistency between the land use and zoning.

Mr. Zuba discussed his opinion that he did not see the site as commercial given the elevation requirements.

Ms. Shamp explained how she believed the request was logical; however, she noted she still had concerns.

Mr. Durrett reported he was looking forward for future property improvements.

Mr. Kakatsch urged the property owners to improve the landscaping.

Ms. Shamp pointed out that Lagoon Street provided a geographic separation for the Downtown Zoning District.

MOTION: Mr. Durrett moved that the LPA recommends the Town Council approve the request to rezone the subject property to the Downtown Zoning District: 1) Approve; 2) Approve; 3) Approve; 4) Approve; 5) Approve; 6) Approve; 7) Approve; 8) Approve; and 9) Approve; Second by Mr. Smith.

VOTE: Motion passed, 5-1; Mr. Zuba dissenting; Ms. Plummer excused.

Ms. Shamp closed the hearing at 10:02 a.m.

Recess at 10:02 a.m. – Reconvened at 10:09 a.m.

Ms. Shamp reported the applicant was not present for the Sign Variance, Pierview Hotel, and asked if the LPA would consider changing the order of presentation.

MOTION: Mr. Zuba moved to move up the CVS CPD; second by Mr. Kakatsch.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

B. FMBDCI2012 -0002 CVS Pharmacy CPD Amendment

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

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

The Affidavit of Publication was entered into the record.

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

Mr. Burt Saunders of the Gray-Robinson Law Firm, representing the applicant, noted the local Store Manager, Ed Cooney, was present to answer questions if needed. He stated the Town staff had recommended approval of the CPD in their Staff Report for the request to amend Condition #2 of Resolution FMB 97-35, which restricted the hours of operation from 8:00 a.m. to 9:00 p.m., to allow CVS to operate from 7:00 a.m. to midnight. He mentioned that the CVS store had been under the impression it could operate from 7:00 a.m. to midnight and had done so for the past eight years; however, a disgruntled employee had reported the error in hours of operation to the Town. He addressed highlights of the Staff Report that pointed out the CVS Pharmacy began operation of the store in 2004 which was formerly operated by Eckerd Drugs who had operated under the 7:00 a.m. to midnight schedule; the notification to the Town was by a disgruntled employee and not a nearby resident; and staff recommended approval.

Ms. Shamp questioned the hours for store deliveries.

Mr. Cooney was sworn in by the LPA Attorney. He reported most deliveries were from local vendors that occurred up until about 5:00 p.m.; however, rarely there were deliveries after that time, possibly a delivery around 6-7:00 p.m. from the CVS warehouse.

Discussion was held concerning conditions of the CPD with respect to hours of operation.

Mr. Smith stated he resided directly across the street from CVS and had no idea of the hours of operation because the store was well-run and quiet.

Josh Overmyer, Planning Coordinator for the Town of Fort Myers Beach, noted he had not been designated as an expert in land planning before the Town of Fort Myers Beach LPA. He requested the designation and the approval to present the amendment request to the Commercial Planned Development, CVS/Pharmacy CPD, DCI2012-0002.

MOTION: Mr. Smith moved to tender Mr. Overmyer as an expert in the area of land planning; second by Mr. Zuba.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Mr. Overmyer displayed an aerial picture of the subject property located near Santini Plaza; and indicated the location of the subject property and surrounding properties. He described the subject property location on the zoning map and on the Future Land Use Map. He stated the applicant was requesting to amend Condition #2 of Resolution FMB 97-35, restriction on hours of operation from 8:00 a.m. to 9:00 p.m., to allow CVS to operate from 7:00 a.m. to midnight. He reviewed the property details which was formerly operated by Eckerd Drugs, CVS began operation at the site in 2004, the property was currently zoned Commercial Planned Development, and the Future Land Use was Pedestrian Commercial. He stated that staff recommended approval of the requested expansion of hours of operation since the hours had been in place since August 2004 with no complaints from neighboring property owners; and the expanded hours would allow additional hours of service to residents and visitors which would keep vehicular trips on the island.

Ms. Shamp questioned if the extended hours of operation were approved would the approval stay with the site if the use changed (i.e. CVS to a restaurant).

Community Development Director Fluegel explained the approval would go with the approved use as indicated on the Schedule of Uses. He added the hours could be conditioned to the specific use as a pharmacy.

Ms. Shamp noted the site was located in a heavily traveled pedestrian area and was traffic impact or pedestrian safety considered as it pertained to the extended hours.

Community Development Director Fluegel explained that the traffic/pedestrian safety were off-site concerns.

Mr. Durrett noted the subject property was located at one of the worst intersections on the island. He stated that on behalf of the Safety Task Force that if CVS had any creative ideas how to make it safer for pedestrians to cross that street he would like to discuss the matter further at a later date.

Mr. Kakatsch urged CVS to consider opening another store location in the downtown or on the north end of the island.

Mr. Overmyer noted the hours of operation for other businesses in the area of the subject property which included, but was not limited to, 7-Eleven open 24 hours a day, Truly Scrumptious open until 9:30 p.m., Castaway Bar until 2:00 a.m., Sand Bar until 1:00 p.m., Skye's until 11:00 p.m., South Beach Grille until 10:00 p.m., Fish House until 10:00 p.m. on Friday and Saturday night.

Public Comment opened.

No speakers.

Public Comment closed.

Ms. Shamp noted the approval could be conditioned as long as the use was a pharmacy.

Discussion was held concerning conditioning approval as long as the use was a pharmacy.

Ms. Shamp recognized Mr. Saunders.

Mr. Saunders pointed out on Page 3 of the CPD, Item #3, *“all conditions herein apply to all uses allowed within this development; any change in use from a drug store/pharmacy with a drive-thru pharmacy to one of the other listed uses may only be permitted following an amendment to the Development Order”*.

LPA Attorney Miller noted that the Development Order does not necessarily come back before the LPA.

Discussion continued regarding “conditioning” the approval.

MOTION: Mr. Andre moved that the LPA recommend the Town Council approve the applicant’s request for an amendment to Condition #2 of Resolution FMB 97-35 to change the permitted hours of operation from the previously approved 8:00 a.m. to 9:00 p.m. to from 7:00 a.m. to 12:00 midnight: 1) Approve; 2) Approve; 3) Approve; 4) Approve; 5) Approve; 6) Approve; 7) Approve; 8) Approve; and 9) Approve; and 10) Approve; second by Mr. Zuba.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp questioned the status of the applicants for the Pierview Hotel & Suites Sign Variance.

Mr. Overmyer reported the applicant was not present; however, he would call the applicant.

Ms. Shamp noted at this point in the Agenda the LPA would normally adjourn and reconvene as the Historic Preservation Board; however, since Ms. Plummer was not present she did not feel there was any news to disseminate.

Mr. Kakatsch concurred with Ms. Shamp.

Consensus was to withdraw convening as the Historic Preservation Board.

VI. LPA MEMBER ITEMS AND REPORTS

Mr. Andre – no items or reports.

Mr. Smith – no items or reports.

Mr. Zuba – suggested bi-monthly instead of monthly meetings for the Historic Preservation Board; that the HPB item on the LPA Agenda be moved to the end of the meeting to avoid convening and reconvening; and suggested the LPA recommend to Town Council that the LPA be permitted to establish a sub-committee or task force regarding Seafarer’s that would be able to continue to meet with the consultant and staff.

Ms. Shamp stated she already spoke with Community Development staff about the LPA having a presentation regarding an economic district, zoning, and TIFs so that the LPA could be familiarized with what might happen in the Seafarer area.

Community Development Director Fluegel explained that the Town Council had instructed staff to prepare qualifications for to retain a land planning consultant to assist the Town Council with issues surrounding Seafarer’s and the Downtown as it pertained to the subject property.

LPA Attorney Miller noted that she was in the process of determining if there was an existing Community Redevelopment Area designation in the Town.

Community Development Director explained the difference between a Downtown Redevelopment Agency (DRA) and a Community Redevelopment Agency (CRA).

Ms. Shamp noted her agreement with Mr. Zuba’s suggestion that the LPA be an integral part of any work regarding the Seafarer’s. She suggested the LPA consider a motion that they designate an LPA member who would be their representative for any Seafarer’s issues and if there was a committee formed or a workshop held.

Discussion ensued regarding designating an LPA member as a representative for any Seafarer issues; consensus was to nominate an LPA member to represent the LPA on Seafarer issues.

NOMINATION: Mr. Andre nominated Mr. Zuba as the LPA representative; second by Mr. Kakatsch.

Mr. Zuba accepted the nomination.

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp asked to craft a letter to Town Council to inform them of Mr. Zuba’s appointment to represent the LPA with matters concerning Seafarer’s as it pertained to Section 34-120.

MOTION: Mr. Zuba moved to approve that Ms. Shamp write a letter to Town Council regarding his appointment as LPA representative; second by Mr. Andre

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp – no items or report.

Town of Fort Myers Beach – Local Planning Agency

June 12, 2012

Page 9 of 13

Mr. Durrett – gave a status report on the dredging of Big Carlos Pass and noted it was being done between Bonita Beach and Fort Myers Beach. He mentioned there would be a meeting in July on the topic where the DEP would be in attendance.

Mr. Kakatsch – questioned the status of the three units on Estero Boulevard in the 4400 Block across from Newton Park.

LPA Attorney Miller reported the subject property was in the middle of the demolition process; and the Town had served notice on the owner and the bank.

Mr. Overmyer reported that he had provided a copy of the previous zoning application to the property owner, which could possibly be used to submit a new rezoning application.

Discussion was held regarding the subject property; the intent to tear down the property; and a demolition permit.

Ms. Shamp pointed out that she believed the LPA was taking a hiatus in August, but stated she heard the Town Council was taking a hiatus in July.

Ms. Chapman stated the Town Council was taking a hiatus in July; and noted staff still had 4-5 sign ordinances to forward to the LPA.

Discussion ensued regarding whether to take hiatus in July or August.

MOTION: Mr. Smith moved to suspend the LPA meeting for July and resume the LPA meetings in August; second by Mr. Andre

VOTE: Motion approved, 6-0; Ms. Plummer was excused.

Ms. Shamp noted the LPA's regrets at missing the Mound House tour.

Mr. Overmyer stated staff could schedule another tour.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – discussed “minimum use determination on property in the Seagrape subdivision” and stated she was working on what would be the equivalent of a staff report for the approximately 40 platted lots which had a majority of lots as wetlands.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Ms. Chapman reported the Community Development Director had asked her to inquire about the LPA's hiatus, which was already addressed.

C. FMBVAR2001-0006 – Pierview Hotel & Suites Sign Variance

Ms. Shamp opened the hearing at 11:10 a.m.

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

The Affidavit of Publication was entered into the record.

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

Josh Overmyer, Planning Coordinator for the Town of Fort Myers Beach, presented the request for the Pierview Hotel Sign Variance, FMBVAR2011-0006. He displayed and described slides depicting the location of the subject property and the surrounding properties. He reviewed the three variances requested:

- Variance from LDC Sec. 30-154(b) requirement of a 3' setback from any public right-of-way or roadway easement for a monument sign to permit the existing sign to be setback 12 inches from the right-of-way
- Variance from LDC Sec. 30-154(c) requirement that the bottom of elevated monument signs can be no more than 18 inches above the highest adjacent grade to permit the existing monument sign to be elevated 48 inches above the highest adjacent grade
- Variance from LDC Sec. 30-154(c) sign height maximum of 5' to permit the existing monument sign to be raised to 8' in height

He displayed photographs of the existing sign and the previous sign by the Ramada Inn in 2000. He discussed the supporting regulations Section 30-154(b) (location); Section 30-154(c) (height); Section 34-87; Section 34-87(3)(a); Section 34-87(3)(b); Section 34-87(3)(c); Section 34-87(3)(d); and Section 34-87(3)(e). He reported the applicant's requested variances were reasonable, given the location of the adjacent building to the north and the above-ground public and private utilities at the sign location. He recommended approval of the applicant's requested variances for overall sign height of 8', for the sign pedestal height of 48", and to decrease the setback from Estero Boulevard right-of-way to 1'.

Mr. Zuba questioned the concept of precedent and how would staff avoid it.

Ms. Chapman noted the Diamond Head sign variance that came before the LPA where they did consider precedent and other issues.

Discussion was held regarding the upcoming sign variances yet to come before the LPA that questioned signage issues such as physical obstructions and real on-site conditions; staff recommendations for minimal variances to address obstructions; consistency of the sign ordinance; measurements for a *de minimus* variance under circumstances or conditions on the subject property; and location of the utilities and the physical obstruction to the current sign.

VOTE: Motion approved, 5-1; Mr. Durrett dissenting; Ms. Plummer was excused.

Ms. Shamp closed the Public Hearing at 11:52 a.m.

IX. LPA ACTION ITEM LIST REVIEW

Ms. Shamp noted Chuck’s Last Stop was presented to Council; the COP was still in progress; and that Mr. Kakatsch, Mr. Smith, Mr. Durrett, and Ms. Shamp would be the LPA contacts when the three cases heard today would be presented to Council in August. She noted the LPA Attorney requested “Seagrape Subdivision” be added to the LPA’s work activity. She mentioned the Town Council had asked the LPA to review the post-disaster recovery ordinance

X. ITEMS FOR NEXT MONTH’S AGENDA

None.

XI. PUBLIC COMMENT

Public Comment opened.

No speakers.

Public Comment closed.

XII. ADJOURNMENT

MOTION: Motion by Mr. Zuba, seconded by Ms. Smith to adjourn.

VOTE: Motion approved, 6-0.

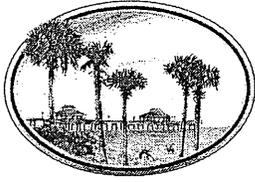
Meeting adjourned at 11:57 p.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

End of document.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development (CPD) Amendment
CASE NUMBER: FMBDCI2012-0002 CVS/Pharmacy
LPA HEARING DATE: June 12, 2012
LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Holiday CVS, LLC
Request: A request to amend Condition #2 of Resolution FMB 97-35, restriction on hours of operation from 8:00AM to 9:00PM, to allow CVS to operate from 7:00AM to 12:00Midnight
Subject property: See attached "Exhibit A"
Physical Address: 7001 Estero Boulevard
STRAP #: 03-47-24-W1-00007.0000
FLU: Pedestrian Commercial
Zoning: CPD (FMB 97-35)
Current use(s): CVS/pharmacy

Adjacent zoning and land uses:

North: Estero Cove Condo
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential
South: Lenell Road, then Villa Santini Plaza,
SANTINI
Pedestrian Commercial

East: Fort Myers Beach Fire Control District (Fire Station 33)
COMMERCIAL PLANNED DEVELOPMENT (CPD)
Pedestrian Commercial

West: Estero Boulevard, then Sand Caper Condo
RESIDENTIAL MULTI-FAMILY (RM)
Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

The subject property is a 1.27 acre parcel at the northeast corner of Estero Boulevard and Lenell Road, across from Villa Santini Plaza. The property was rezoned from Tourist Commercial (CT), a Lee County zoning classification, to Commercial Planned Development (CPD) in 1997, under Resolution 97-24, as amended by Resolution 97-35. The CPD was approved with three deviations and 18 conditions. Condition #2, in particular, is the reason for the proposed CPD amendment, since it limited the hours of operation for any use on the subject property to between the hours of 8:00 AM and 9:00 PM. When the property was originally developed as an Eckerd drugstore/pharmacy, the hours of operation abided by the conditions of approval in FMB Resolution 97-35. When CVS began operating on the property in 2004, however, they were unaware of the condition limiting the hours of operation, so they operated with the same business hours that are common to many CVS locations across the country, with the exception of those that are open 24 hours a day. The requested 7:00 AM to 12:00 Midnight hours of operation have been in place since August 1, 2004. CVS/pharmacy operated with these hours for the past 7 ½ years until a complaint was filed in February 2012 regarding the store operating outside of the approved hours of operation. Code Enforcement investigated the complaint, which is in the Town's case tracking system as CE12-0050, and the applicant determined that they would request a CPD amendment to correct the violation.

Analysis:

There are changed conditions that make the request appropriate because the Fort Myers Beach Fire Control District requested a rezoning in 2007 and was approved to locate Station 33 on the adjacent parcel to the east of the subject property. Also, when the operator of the location changed from Eckerd to CVS/pharmacy, the new operator was not aware of the restriction on hours of operation, and has been operating under the requested hours since August 1, 2004.

The original hours of operation were approved in Resolution 97-24 as amended by Resolution 97-35 based on the applicant's attorney's suggested hours of operation that were contemplated by Eckerd at the time of the original rezoning. In reading the minutes (attached Exhibit B) of the July 7, 1997 public hearing where the property was rezoned from Tourist Commercial to CPD (Page 5 of 9), the attorney representing Eckerd indicated that "they are talking about 8AM to 9PM." Later in the same paragraph, while talking about

the drive-thru and the hours of operation for that particular use, one councilmember said "They could close down the drive-thru at 9:00 and allow the store to stay open later."

The hours of operation for CVS/pharmacy at this location has been from 7:00AM to 12:00 Midnight for seven and a half years before a complaint was made to Fort Myers Beach Code Enforcement. The applicant's narrative indicates that the complaint was lodged by a disgruntled employee, and not a nearby property owner. Furthermore, the requested hours of operation allow additional hours of service to residents and visitors, alike, outside of the peak traffic hours of Estero Boulevard, and keep those trips on the island, rather than necessitating a trip to visit a drugstore/pharmacy located off of Estero Island. This is particularly more convenient for residents and visitors at the south end of the island, who experience a longer wait to leave the island to reach other drugstores/pharmacies in the Iona/McGregor area along San Carlos Boulevard or Summerlin Road in unincorporated Lee County.

Findings and Conclusions:

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

There is no error or ambiguity to be corrected by the requested amendment to Condition #2 of Resolution 97-35.

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

The major change that has taken place is that this is now an established business on Fort Myers Beach, operating as a pharmacy/drugstore since 1998. CVS/pharmacy has operated from this location since August 2004. Also, in 2005, the neighboring property to the east was purchased by the Fort Myers Beach Fire Control District, and Fire Station 33 was built on the adjacent parcel. Therefore, there is no longer a potentially noise- or time-sensitive use adjacent to the subject property.

- c. *The impact of a proposed change on the intent of LDC Chapter 34.*

The requested amendment to the CPD will not have an impact on the intent of LDC Chapter 34.

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

Resolution 97-35 found the requested CPD zoning to be in compliance with the Comprehensive Plan. Further, the subject property is located in the Pedestrian Commercial Future Land Use category, the highest-intensity land use category on Fort Myers Beach.

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

Resolution 97-35 found the requested CPD zoning to be in compliance with all performance and locational standards.

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

Urban services are available, as the subject property is already a customer of Beach Water, and roads and sidewalks are in place along both street frontages.

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

Resolution 97-35 found the requested CPD zoning to protect, conserve and preserve environmentally critical areas and natural resources.

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

The requested hours of operation will be compatible with existing uses and will not cause damage, hazard, nuisance or other detriment to persons or nearby property. The CVS/pharmacy has operated at the subject location for more than 7 ½ years with the requested hours of operation, without any complaints from nearby property owners. The complaint that resulted in the Code Enforcement case CE12-0050 allegedly came from a disgruntled employee, not an affected nearby property owner.

- i. *Whether the location of the request places an undue burden upon existing transportation and other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The request will not place any burden on the transportation network or other facilities. In fact, the request may alleviate some burden on Estero Boulevard because customers will be able to access the CVS/pharmacy outside of the congested peak hours.

- j. *For planned development rezonings, see § 34-216 for additional considerations (below):*

1. *The proposed mix of uses is appropriate at the subject location.*
2. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations.*
3. *All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.*

4. *The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development.*

The request is appropriate at the subject location, does not negatively impact the public, and is consistent with the comprehensive plan.

III. RECOMMENDATION

The condition of the zoning approval regarding hours of operation was not known to CVS/pharmacy when they took over operation of the drugstore/pharmacy originally occupied by Eckerd in August 2004. The original hours of operation were approved in Resolution 97-24 as amended by Resolution 97-35 based on the land use attorney's suggested hours of operation that the previous tenant was contemplating at the time. In approving the original CPD, Town Council did not have a major focus on the hours of operation as a big concern for the project. The hours of operation for CVS/pharmacy at this location had been from 7:00AM to 12:00Midnight for seven and a half years before a complaint was reported to Fort Myers Beach Code Enforcement, allegedly by a disgruntled employee, and not a nearby property owner experiencing noise or other late-hours nuisance. Furthermore, the requested hours of operation allow additional hours of service to residents and visitors, which keep trips on the island. For these reasons, Staff recommends **APPROVAL** of the requested amendment to Condition #2 of Resolution 97-35 to allow hours of operation between 7:00AM and 12:00Midnight.

IV. CONCLUSION

The granting of the requested CPD Amendment would legitimize the hours of operation for CVS/pharmacy that have been used by CVS since it took over operation of the location at 7001 Estero Boulevard in August 2004. The request will not adversely affect surrounding properties, and would allow the business to resolve the Code Enforcement complaint.

If Town Council finds that the requested CPD amendment 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 rezonings, Town Council should deny the request as provided in LDC Section 34-85(4). If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning.

Staff recommends **APPROVAL** of the requested CPD amendment to allow hours of operation from 7:00AM to 12:00Midnight.

Exhibits:

- A – Legal Description
- B – Zoning Map
- C – Future Land Use Map
- D – Minutes of July 7, 1997 Town Council meeting
- E – Minutes of October 20, 1998 Town Council meeting

Exhibit A
Legal Description

A parcel of land in government lot 1, Section 3, Township 47 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the point of intersection of the Easterly right-of-way line of Estero Boulevard (S.R. No. 865, 80.00 feet wide) with the South line of said Government Lot 1; thence North 18°34'20" West for 63.00 feet to the Point of Beginning of the herein described parcel of land;

From said Point of Beginning; thence continue North 18°34'20" West for 209.51 feet; then North 89°11'00" East for 306.70 feet; thence South 00°49'00" East for 199.53 feet to an intersection with the Northerly right-of-way of Lenell Road (60.00 feet wide) as described in O.R. Book 849, Page 282 of the Public Records of Lee County, Florida; thence South 89°11'00" West along said right-of-way line for 242.81 feet to the Point of Beginning.

Exhibit B - Zoning Map

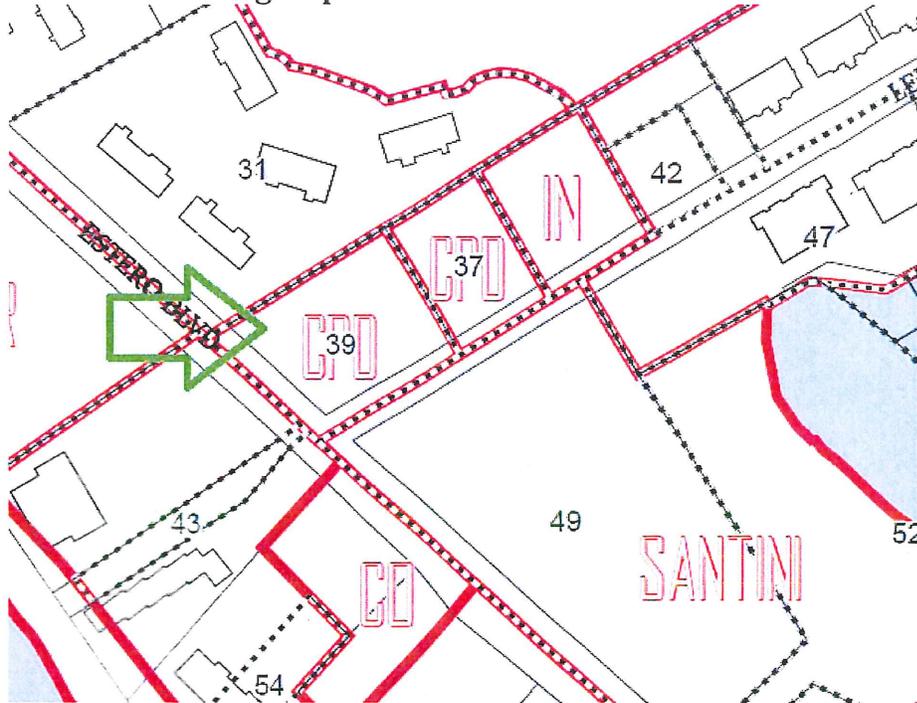
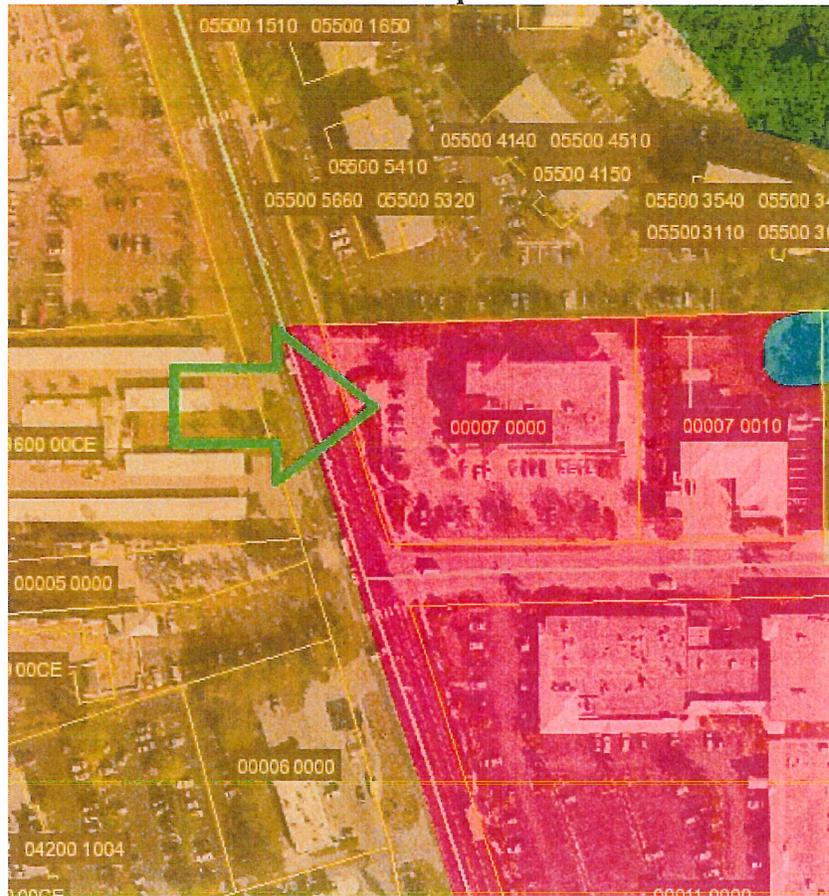


Exhibit C - Future Land Use Map



**FORT MYERS BEACH
TOWN COUNCIL MEETING
JULY 7, 1997**
Nations Bank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, July 7, 1996, at 3:00 P.M.

Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Father Raymond Kress of St. Raphael's Episcopal Church.

IV PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

V APPROVAL OF MINUTES OF JUNE 16, JUNE 17 AND JUNE 26, 1997

Corrections for June 16:

page 1, the third speaker's name is Bob Bockman.

Page 3, next to last paragraph, Mr. Murphy said that he was not attacked on the beach, but that his car was broken into

Page 7 item XIII – it was clarified that the motion was made before the discussion. Mr. Murphy seconded the motion for the purpose of discussion and then voted against the motion.

Page 8, item XIV – it was clarified that the Chamber Foundation hired Shawn Holliday as Main Street manager, and that he is hired only until December.

Corrections for June 26:

Page 4, middle of the page, John Gucciardo clarified that he is not in favor of limiting the number of terms a person can serve

Motion: Mr. Murphy moved and Mr. FitzSimons seconded that the minutes be approved with the above changes. The motion passed unanimously.

VI PUBLIC HEARINGS

A DONALD OAKES 97-04-094.05V

Mr. Roosa swore in Mr. Oakes. Mr. Oakes said that he is asking for two variances so he can build a deck on the canal side of his home, and also a variance on the north side because his house is already infringing on the setback. The house is built on an irregularly shaped lot and he cannot build the deck square with the house without asking for the variances. Mr. FitzSimons asked if it would be an uncovered deck. He replied that he intends to screen in a portion so he can use the deck year round. The cover was not included in the request because he thought it would be covered in the building permit. He said he intends to put a metal roof over it, which Mr. FitzSimons said would tend to make the deck an enclosure, not a screened deck. Mr. Reynolds said he wishes that Mr. Oakes had wanted an angled deck. These variances will legitimize his non-conforming residence. If Mr. Oakes could get the deck without encroaching on the setbacks, it would have been better. Mr. Oakes said that to get the same square footage, he would encroach on the canal setback. He said that this plan is what he would like to build, but it is up to the council if they want to make changes. Mr. Reynolds said that if Mr. Oakes' request was the only one, he would not object, but the council has already handled several and it seems to be a trend in the town.

Mr. Roosa swore in Nettie Gustison of Lee County Development Services. Ms. Gustison said that the house was built before zoning so this request will legitimize the 1.5 foot setback that already exists on the side of the house, and allow the deck to begin at the back of the house where there is only a 3.2' setback. There is a typo in the staff report: it should say that the deck addition will be 18' from the canal. The steps will add another 2'. Mr. Oakes' house is the only one in the immediate area without a deck, and building the deck will not harm anyone's view. Staff believes there are extraordinary conditions that create a hardship, that the problems are not of the applicant's making, and that the proposed deck will not be injurious to the neighborhood. The staff recommends approval with the conditions that the side setback variance is limited to the existing house and the proposed deck as shown on exhibit C, that that the waterbody variance is limited to deck addition as on attachment C. The LPA recommended approval with the same two conditions. In response to questions, Ms. Gustison said that she reviewed this request as an open deck, not as a screened enclosure. It will require a building permit to build the roof and the screened enclosure. She does not think it would have made a difference if he had told her it would be enclosed because she was looking at the site plan. Mr. FitzSimons asked if an enclosed deck with a roof has more visual impact to the neighbors. She said a solid enclosure would and she probably would not have approved that request at the same square footage, but a screened enclosure has less impact. She does not think a screened enclosure will negatively impact the neighborhood. She said that a "porch" has permanent enclosed sides as opposed to a "deck." She said that there have been no letters in the file objecting to his plan.

Mayor Cereceda opened the meeting for public comment. There being no public comment, the public hearing was closed.

Motion: Mr. FitzSimons moved that the requests be approved as conditioned with the added condition that the deck be uncovered and unsided. There was no second. The motion failed.

Motion: Mr. Murphy moved and Mr. Isler seconded that the requests be approved as conditioned by the staff and LPA. Mr. Murphy, Mr. Isler, Mr. Reynolds and Mayor Cereceda voted for the motion. Mr. FitzSimons voted against the motion. The motion carried.

B FIRST UNION NATIONAL BANK 96-12-206.01.01 (ECKERD DRUGS)

Mr. Charles Basinait, of Henderson Franklin, stated that he has been retained by the applicant in the request to rezone from CT to CPD. Under CT zoning, they could build the building they wanted but a drugstore/pharmacy would not be permitted. The property is located at the NE corner of Lenell and Estero, and there is a vacant bank building on the site. On June 10, they showed the LPA a master concept plan with driveways that were close to the property line and parking on the west and the front, with a service area on the east side next to Cap Plaza. The LPA had concerns that the architectural design was too typical, and they wanted the building located more toward the corner of the lot. They also wanted it to be more pedestrian friendly. Since then they have met with Bill Spikowski and Chip Block, and have tried to offer a new plan to address some of those concerns. They will be happy to offer the first site plan or the new one, although they would prefer the first. The new plan moves the building closer to Lenell and Estero. Most of the parking has been moved to the north and some to the east. The drive-thru will still be in same location but they will add a planter for a sound buffer. The service area will still be on the back and can be buffered. Eventually the Town contemplates street parking on Estero. Now there is only limited parking on the front. If they move the building, they can no longer build without deviations. (A deviation is like a variance, but a variance has a higher standard of proof.) Their plan meets 15 of the 17 conditions set by the county. One of those conditions regards buffering on the north side. Because the building has been moved, they will no longer need a solid wall, but can use a thick vegetative buffer instead. The other condition regards parking on the west side of the building. If the Town ever decides to put parking along Estero, they will remove that parking and remove the access point. If street parking is created and then removed at a later date, they must have the condition that the parking will be put back in at that location.

Tim Keene was sworn in by Mr. Roosa. Mr. Keene is a civil engineer and president of Keene Engineering. He stated his credentials as a civil engineer, and the council had no objection to accepting Mr. Keene as an expert witness. Mr. Keene stated that his firm was retained to do the master concept plan and the revision. Mr. Keene spoke about the two site plans and their differences. In the original there were two access points; in the new plan there are three: one at Lenell, and two on Estero (in line with the existing drives across the street). The drive-thru is now about 80' from the northern property line on the new plan. There will be on street parking on Lenell under the new plan. The existing bike path on Estero

has stormwater inlets. They will raise the bike path, so they will have to address the drainage of Estero. In the original site plan they were to have 9.5' elevation. The existing building is 10.2'. Flood elevation is 13'. The new plan will be 8.5' and the walls will be waterproofed. (Because the building was moved closer to the property line, they felt that the building had to be lowered.) There will be steps on the front of the building but they will avoid steps as much as possible by sloping the sidewalks. There will be a ramp from the north side parking lot for handicap accessibility. There will be a bike rack. Stormwater management will be on-site. There will be an open dry retention area and an under-the pavement chamber. There is existing retention along the north property line and they will keep that if they can with the buffering. They cannot lower the building much further and still have enough retention. He went through the deviations. #1. A vegetative buffer on the north side instead of a 12-foot wall; #2. Elimination of the landscape strip which is not needed for utility easements; #3. Deviation on setbacks in order to move the building forward; #4. Deviation of the setback on the east side; #5. Deviation to allow only 4 stacking vehicles instead of five; and #6 which is a catchall in case they have missed something. Mr. Isler asked why the spaces are put on the Estero side when that only gains two spaces overall. Mr. Keene said it was to provide nearness to the front door, which is important for marketing. Mr. Reynolds asked about the street parking on Lenell. Mr. Basinet said that was in conformance to the future beach concept plan for the Santini area. They will not be dedicated to Eckerd use. Mr. Basinet showed a rough drawing of the Key West design that they propose to use. The final design would have to be approved by the Town Manager. Mr. FitzSimons asked about the windows. Mr. Basinet said they are display windows that would start about 4' above the ground and would be about 18" deep. If they lower the windows too far, they lose too much marketing space inside the building. Merchandise would be in the windows, but you wouldn't see into the store. Mr. Isler expressed concern about so many parking spaces requiring pedestrians to cross the drive-thru lane. He is also worried about accidents with people parking on the street so close to the access point on Lenell. He was also concerned about the extra access point on Estero. He was concerned about the liability. Mr. Basinet said that they would rather build the first plan, but it doesn't match up with the unadopted beach plan. It seemed that that was where the LPA had most of their concerns and they were trying to address those concerns. Mr. FitzSimons asked about the last two items on Mr. Spikowski's memo regarding signs and service area. Mr. Basinet said that they can screen the service area. Regarding signs, they do need to retain corporate identity, but also want it to fit in with the Key West design. He suggested having the Town Manager work with them on signs as part of the design review process.

Mr. Roosa swore in Ken Griffith. Mr. Griffith stated that he is with Keene Engineering and he stated his credentials as a planner. The council had no objection to recognizing Mr. Griffith as an expert in land use planning. Mr. Griffith spoke about comprehensive planning consistency. The original plan that went before the LPA is consistent with the current adopted plan. It was difficult to evaluate the second plan because the vision for the area has not been adopted yet. He talked about the goals and objectives of the design element and he feels that they have complied by moving the building forward, making it more pedestrian-friendly, attempting to use dry floodproofing, and changing the exterior design of the building. Mr. Reynolds asked if the new plan could be built at 9.5'. Mr. Basinet said that it could but they lowered it to make it closer to the streetscape elevation in response to the LPA. Mr. Reynolds also asked if the building could be reduced in size so there would be more buffer between the site and Cap Plaza and provide more space for a swale on the north side for drainage. Mr. Basinet replied that it could not be reduced and still be a viable marketing size for that area. The extra space is not needed for water retention, and the owner of Cap Plaza does not have a problem with the site plan. Mr. Basinet said that Dave Moore of Wilson and Moore Architects was available to talk about dry floodproofing, but it was decided that it was not necessary to have him testify at this hearing.

Mr. Roosa swore in Chip Block of Lee County Development Services. Mr. Block stated that they have looked at both plans, although they have not had as much time to look at the second plan. They recommended denying the original request, stating 17 conditions. By the time of the LPA meeting the applicant had agreed to comply with 15 of the 17. The county was concerned about the drive-thru location and its proximity to the condominiums. Staff believes the second plan has addressed the building design and the movement of the building in accordance with the vision plan. The drive-thru is still on the north side but is better than the first plan. The last condition relates to the buffer on the north side. The new plan allows for more buffering and also for a planter that would further buffer the drive-thru area. Staff has gone through the deviations. He feels deviation #1 is proper to eliminate a wall with no purpose but to protect the condominiums. Deviation #2, 3 and 4 have to do with setbacks that are necessary by moving the building forward. In deviation #5 regarding stacking, they have asked them to try to move the drive-

thru window to allow the extra car, but Mr. Basinait says the applicant does not want to move it because it would change the inside plan. He still thinks it can be done. Deviation #6 is necessary because of the short amount of time to study the plan, and he recommended that any deviation under that area must be approved by the Town Manager. If you are going to follow the draft plan, you must go with the second plan. If you go with the first plan, he feels you need to protect the condominium owners. Mr. Reynolds said he thinks you have added to the condo problems by putting all the parking on that side. Before you only had the drive-thru traffic. Mr. Block said there would have been truck traffic and some customers exiting along the north side under the earlier plan also, but now it will be further away from the condos. Mr. Block also spoke about the second access on Estero. Their traffic engineer did not recommend the second access. But if they eliminate the access, the front spaces cannot be used and they will be two spaces short. Perhaps the council could say the new access is "right-in" only. Mr. Roosa asked about deviation #5 – he thinks it should be land development code 3.ii. Mr. Block confirmed that 3.ii is correct.

Mayor Cereeda opened the public hearing.

A LARRY PIERCE

Mr. Pierce is a resident of Lenell Road, and spoke on behalf of the Lenell Road Association, which represents about 170 property owners. He has already delivered a letter and photographs. They are already neighbors of Eckerds, and are in favor of the Town helping Eckerds upgrade their store and stay in this general location for the convenience of residents and keeping traffic in the area. However much of the conversation was to help the condo owners to the north, but nothing has been said about the Lenell Road traffic problems. It is almost impossible to pass through many times of day. Often large trucks park in the right-of-way blocking one lane of traffic, and sometimes the trucks use their hydraulic loading into the lane that is open. Also there are pedestrians and bicycles on the road because there is no sidewalk. In addition, the access going into Santini is too close to Estero. Lenell is not just the access to their condos. It is also their front door and they don't like the look of trash on the right-of-way. They are against the building being put so close to the corner because they do not think it will enhance the entrance to their homes. It is being done to comply with an unadopted plan. He assured them that the people of Lenell Road will be there to speak out against the adoption when it comes up. The first plan would allow more landscaping and buffering and preserve pedestrian traffic along Lenell. He urged the council to reject this new plan and try to make the first plan proceed.

B JOHN MULHOLLAND

Mr. Mulholland, chairman of the LPA, said that the new plan has accurately conveyed the concerns of the LPA. He encouraged Mr. Pierce to take part in the design planning process. They are trying to make everything pedestrian friendly by moving buildings forward and parking to the rear. They are going to try the same in Times Square. The LPA works for the Council and it is up to the council to make the final decision but he doesn't think the first plan reflects the direction the LPA is going.

C ROD VAYO

Mr. Vayo is a tenant of Villa Santini and a resident of the south end. He thinks that the Eckerd's move will have a negative impact on Santini Plaza, but he is still for the plan. He is afraid that if Eckerd's does not get something reasonable, not only will Santini be left without an Eckerds, but the whole Town will be left without one. There will be many people who will be upset if Eckerds leaves the south end. He thinks the first plan is head and shoulders over the new plan. The new plan makes no sense because parking is now toward the condo. The drive-thru will be sound proofed either way. Eckerds is a good neighbor, and they are bending over backwards to do what the Town wants.

D BILL VAN DUZER

Mr. Van Duzer is a member of the LPA and complimented Eckerds for responding to the LPA's concerns. The LPA has been working with the planner, and they have decided they want to make the Town pedestrian friendly and put parking lots behind buildings. He has a problem with the 13 parking places on Lenell. He thinks it would be disastrous, and they should leave a sidewalk on Lenell. Everything else is a positive change. He suggested allowing them to build with only 50 parking places and getting rid of the places in front and the extra access point. It was clarified that the whole LPA wanted the building moved forward, and that the two negative votes were relative to the drive-thru.

The public hearing was closed. The council took a break at 5:50 PM and reconvened at 6:02 PM.

Mr. Basinait said that the second access is only meant to be a right-in entrance and is only temporary until they put parking on Estero per the design concept drawn by Mr. Dover. They feel like they

responded to the LPA, but it will pull the rug out if the council approves the second plan but pulls out the four spaces in front and the spaces along Lenell. If the council goes to the first plan, they can still use the Key West design. They can add more pedestrian features on the front, but they may need a deviation to remove some parking spaces. They can put a sidewalk on Lenell to connect with the one of Estero. They can do the display windows if they want. The drive-thrus can be buffered, but they still would like heavy vegetation without the wall. He mentioned letters that have been received in support of the plan. One is from Estero Cove, one of the condos on the north side. They prefer the first plan. He asked the council to please not take parts of one plan and parts of the other plan, and take out the things in the second plan that make it workable for Eckerds. Mr. FitzSimons said he felt that the reason Estero Cove wanted the first plan was so that the parking wouldn't be near them. He asked about hours of operation and lighting. Mr. Basinati said they are talking about 8 AM to 9 PM, and they will have standard lighting fixtures. There is some concern that with parking in the back there is a greater possibility of crime because no one can see what is going on. The drive-thru will be open the same hours as the store, but he does not believe there is always someone sitting at the drive-thru at all hours of operation. They are looking at a speaker system such as is used at banks, so he does not think sound will be a problem. They could close down the drive-thru at 9:00 and allow the store to stay open later. Mr. Reynolds feels like they have gone from one good plan to another good plan. But he still does not see why there has to be parking on the street at Lenell. He thinks that would be disastrous, especially with the big trucks parking there unloading. Mr. Basinati said that the parking was added because of the beach plan and also for convenience parking closer to the front door.

Mayor Cereceda asked the council to focus the discussion on the first or second option. She felt that the move should be toward the second option because that is the way the unadopted plan is going. Mr. FitzSimons said the council has underwritten this visioning as part of the comp plan and it has been endorsed by the LPA and a good number of people in the community, and Eckerds has been accommodating. We have the possibility of doing something that will be better for the community and he thinks they should take advantage of it and endorse the second plan, recognizing that some things such as architecture still need to be ironed out. Mr. Isler said he sees this as a preview of the comp plan. Many of the ideas are still in the planning stage and it is yet to be seen if some parts of the plan will be adopted. He said we approved a hotel recently under the code we currently have, not some unadopted code. He thinks the facts support the original plan and he does not see it as a conflict with what the LPA wanted. Add the architectural look, put in large trees for buffering, and add bike rack, benches, and walking paths and it will meet the pedestrian friendly aspect. This can really benefit the community and the tourists, and will stop a lot of trips by people on the south end, so he sees it as a positive thing. Mr. Murphy said he would suggest dressing up the sides of the buildings so it doesn't look like a big box. He feels that the revised version is better than the first because it is in keeping with the goals the town is trying to accomplish. He understands the concerns of the people of Lenell, but if he lived on Lenell, he would still want this version. Mr. Reynolds questioned the vision of the plan which is not yet adopted. He mentioned a town in Ohio that has won awards, and they have done the opposite by moving their buildings back from the street, rather than forward. He thinks we are going backwards in time. In Times Square he thinks it is a good idea because you are cramped with space but he doesn't think it is right for this area. He thinks it will present a problem for the condo owners to have the parking in the rear. If you can make the building look nice, he doesn't think there is anything wrong with the first plan, because he doesn't think sound will be a problem with the drive-thru. If the council can't go with the first plan, he would like to see it go back to the LPA so Mr. Block can have more time to study the new plan. He does not think there is enough room in the service area for a semi to unload without blocking the drive-thru.

Mayor Cereceda said there have been town meetings and workshops where this design idea has been discussed. The Town does not want to go to a concrete jungle look. But she has a big problem with two accesses on Estero where none exists now. Tim Keene said it cannot be turned into dead end parking, but it could be reversed to be an exit only. He said the exiting movement is much safer than an entrance. It could be signed, and that cars will not pull in because they will see the spaces are angled the other way. Mr. Isler said the second plan is a bad idea: shoppers in 2/3 of the spaces will have to walk across the drive-thru exit; there is more noise from parking than from a drive-thru; street parking on Lenell will be a safety problem; even one access on Estero is not good, much less two; the building is going lower and it should go higher; the fake windows are ludicrous; you can't see 3/4 of the parking from the store; the neighbors are opposed to the new plan; the builder opposes it; and putting a building on the property line on Lenell and adding parking makes a narrow corridor with no windows. It is not reasonable to base the plan

on something that hasn't been passed yet, and he doesn't think it was that clear-cut at the design workshops that everyone wants this. He thinks it is a ludicrous concept to have parking along Estero Blvd at Santini. Mayor Cereceda said the Town is trying to go back to the community approach where there are buildings on the corners. Mr. Isler feels that with the exception of Topps and Villa Santini, the town already has buildings close to the road. Mr. FitzSimons said it is reasonable to assume that this new building will be there at least 20 years and we need to build something that will fit in the town's 20-year plan. He thinks that if they sent it back to the LPA, they would approve the new plan, and if you believe in what the LPA is doing, you have to go in this direction.

Motion: Mr. FitzSimons moved that the new plan with the conditions and deviations, and with the suggestions outlined in Mr. Spikowski's memo be adopted. Mayor Cereceda seconded the motion for discussion. **Discussion:** Mr. Isler asked since the LPA turned this down why it doesn't go back to the LPA. Mr. Roosa said he thinks it is OK because the LPA has already considered it and expressed their concerns and they have been addressed. Mr. Basinait said his only concern in having the Spikowski memo part of the record is #2 about signage. He asked the council not to hamstring them, but to leave the final decision up to the Town Manager for final approval. They need signage and they need it in strategic places. Mayor Cereceda pointed out that signage is also going to a big part of the unadopted plan. Mr. Basinait said that regarding the deviations, he understands the only change is to correct the typo in #5. In the conditions, there should be two changes: the minimum setback changed to 4.5' along Lenell and 20.2' along Estero; and in #8 he will include the portion along Estero to have the display windows. Mayor Cereceda said she is still bothered about the parking on Lenell. She thinks that was discussed in regards to redoing Santini. Mr. Murphy asked about adding architectural designs to the south and north walls. Mr. Basinait said he would work with the Town Manager on design, there are not that many walls that do not have activity on them already. Mrs. Segal-George said the redesign of Santini will go a long way in helping fix the problems on Lenell. Mayor Cereceda questioned whether we are creating a worse problem until Santini is fixed. Can there be a provision that the parking will be added on Lenell after Santini is fixed? Mr. Basinait said perhaps the parking could be changed to 5 or 6 parallel spaces. Or perhaps you could take out the first 4 or 5 spaces nearest Estero, or some near Estero and some near the access and leave the eight spaces in the middle. He said they are most concerned that both areas of street parking will be removed. He said his client feels they need the four spaces on the front and at least 10 on the side. Mr. Isler said he has a hard time believing that Lee County is ever going to approve parking on Estero. He feels that this plan is based on something that may never come to pass. Mr. Block said that you do not need a deviation for the access points on Estero as long as they are across from established accesses. Mayor Cereceda said she cannot approve something that will create a problem on Lenell until it becomes part of a plan. Mr. Basinait suggested that the problems on Lenell are a code enforcement problem – get the sheriff to stop people from unloading on the street. He said perhaps they could angle the parking and get about 9 spaces and add some striping on Lenell. The Council discussed the possibility of paving the right of way along Lenell to gain some room. Mr. Keene said if you add a center stripe and angle parking it will improve the traffic problems. Mrs. Segal-George said every indication is that Santini is very interested in redoing the center and hiring Mr. Dover, but she cannot promise that it will happen or that it will happen sooner because of this. Mr. Basinait said that Eckerd semis will not park on the street and cause traffic problems because they will park at the service entrance. **Amended motion:** Mr. FitzSimons added a condition of approval on signage by the Town Manager, pedestrian walkways on the north side for the convenience of the condo residents, and striping and angle parking along Lenell. **Action:** Mr. FitzSimons, Mayor Cereceda, and Mr. Murphy voted for the motion and amendment. Mr. Reynolds and Mr. Isler were opposed.

VII COUNCIL MEMBERS' ITEMS AND REPORTS

A RUSTY ISLER

Mr. Isler asked about the time frame for the comprehensive plan. Mrs. Segal-George said it should come out of the LPA by late fall. Because it is such a big document, each element will be voted on separately. Then it is sent to the state. If they make changes, it may come back for more work. Once the comp plan is approved, all the land use regulations will have to be rewritten to conform to the comp plan, which is the vision only. Mr. Isler said originally the LPA was going to do the comp plan in about 18 months. Since then we added the role of land use hearings. He thinks the major effort of the LPA is the

comp plan and that they should have a separate attorney for hearings. He thinks that having the Mrs. Segal-George acting as LPA attorney at a hearing and then being the Town Manager when the same case comes to the council, might be a conflict of interest. Having a separate attorney would also allow Mrs. Segal-George to devote more time to the Town. He does not think it is in her best interests to work such long hours for such a long time. Mr. Roosa said he didn't think it would automatically create a problem because they are such different roles. He does not see it as a problem from the applicant's viewpoint either. Mrs. Segal-George said Eckerds raised that issue for the first time, but she does not believe she is in a conflict issue. She feels she is being put in an awkward position, not as the lawyer for the LPA, but as the Town Manager. She believes she is telling people the position of the Town Council. These are not personally her opinions. She has been imparting what she thinks the council wants. Mr. Isler said his personal vision does not include moving buildings to corners, having a high rise district, etc. He is trying to figure out whose vision it is. Mrs. Segal-George said it came from the community meetings and the draft that Spikowski brought back from those meetings. Then it went to the LPA, then it was presented at the joint meeting. She did not write it or have any personal input. Mr. Isler said he has been to all the meetings and he missed the clamor for high rises. Mr. Murphy said that it was just identifying that that area is where the high rises already are. It does not mean to tear down cottages and build more high rises. Mr. Roosa thinks we should adopt the design element by itself because it would be the basis for everything else and it could stand alone. It would cost more to do it that way, but the design element affects parking, setbacks, etc and is the vision of the town and should be the structure for building the rest of the comp plan. He said that Mr. Spikowski and Mrs. Segal-George are not excited about that idea because of the extra money and work. But if there ever were an adverse ruling and the applicant decided to file suit, Mr. Roosa would have a hard time explaining to the judge that the council was applying something that has not been adopted and has not gone to public hearing.

B TED FITZSIMONS

Mr. FitzSimons had no items to bring before the council.

C GARR REYNOLDS

Mr. Reynolds asked about Mr. Roosa's conversation with Mr. Spikowski. Mr. Rossa clarified that Mr. Spikowski was not in favor of passing the design element separately, but that he was in favor of the second plan over the first plan in the Eckerd hearing.

He asked about the letter from Mrs. Segal-George to Don Stilwell regarding sidewalks. He asked if council had approved spending \$75,000 to build the sidewalks now and he was told that they had. He asked why we should pay half of the cost now, when if we wait a year, they will pay the whole cost. Mr. Murphy said that if he thought it would save one life on Estero Blvd., he would vote to do it again. Mr. Reynolds asked if sidewalks at Santini were included, and it was clarified that the area for the sidewalks was the 8/10 of a mile from the end of the sidewalk to Estrelita Street, which is the end of the island.

He agreed with Mr. Isler that he sees a conflict of interest that Mrs. Segal-George wears two hats.

D RAY MURPHY

Mr. Murphy had no items to bring before the Council.

E MAYOR CERECEDA

She would like to direct the Town Manager to see what it would take to get the sky bridge painted and cleaned up on a regular basis. She doesn't believe it has been cleaned since Bob Gaydos took it upon himself to do it. She asked if the rest of the council agreed and they did.

VIII FIRST READING ON ORDINANCE TO AMEND THE VESSEL CONTROL AND WATER SAFETY ORDINANCE (96-26)

Mayor Cereceda read the titles. She explained that this was to close the loophole about parasailing and water taxis, and to clarify the speed limit in the channels. Public hearing was set for July 21.

IX NEW BUSINESS

A APPOINTMENT OF DELEGATE TO FLORIDA LEAGUE OF CITIES CONVENTION

Mr. Murphy was selected as the voting delegate for the Town.

B REQUEST FOR FORMATION OF A CITIZENS ADVISORY COMMITTEE ON BACK BAY

Mr. Mulholland, a member of the LPA, would like to set up a citizens advisory committee. Each member of the LPA has an area of responsibility and he chose the back bay because he had been on Mr. Judah's committee on the bay. Not much happened on that committee or on the other committees on the back bay. The bay is a major tourist draw, and he has seen it degrade in the eight years he has lived here. He has found seven other people with interest and qualifications: Arden Arrington, Ilene Barnett, Jack Bright, Eve Haverfield, Tom Lee, Heather Stafford, and Joe White. They met to see if it was prudent to set up an advisory committee. They intend to do fact-finding and bring recommendations to the LPA and the council. They will need funds for agendas and minutes. He handed out a list of the proposed members and the mission statement. It will meet in the sunshine. Mrs. Segal-George said that the new budget has some expense money for formation of committees already built into it. Mr. Roosa clarified that they would be independent of the LPA. It will be similar to the transportation committee.

Motion: Mayor Cereceda moved and Mr. FitzSimons seconded that the Town Attorney be instructed to draft an ordinance to establish a citizen's advisory committee on the back bay. Mr. FitzSimons suggested that the committee have no more than 9 members. The motion passed unanimously.

X TOWN MANAGER'S ITEMS AND REPORTS

A HEIGHT ORDINANCE

Mrs. Segal-George stated that the LPA had their hearing on the height issue on July 1. It was too late to put it on tonight's agenda. She passed out a copy of the LPA resolution for draft discussion. It was set for first reading on July 21. Mr. Reynolds asked about the slope of the roof. Mrs. Segal-George said that height is calculated to the highest point on the exterior wall, and that the pitch of the roof is not regulated, but that the area created will not become habitable space.

B BUDGET

Mrs. Segal-George asked whether the Council wants to revisit the design element. She does not feel they are ready for a hearing unless they want it to be adopted separately. It was suggested that the council hold a workshop on the design element after they finish the budget. Mayor Cereceda suggested that the budget be included on each agenda until final passage. Mrs. Segal-George said that budgets are available for anyone to pick up. The two public hearings will be Sept. 2 and Sept. 15 because they must not conflict with the school board and commissioner budget hearings. Also regarding the budget, they will hold with this document and do dated errata sheets in different colors until the final budget is adopted.

It was agreed that the council needs a budget workshop before September 2. Since it was determined that there was no time in August when all council members could be present, it was decided to begin the regular July 21 meeting at 1:00 PM with a budget workshop.

XI TOWN ATTORNEY'S ITEMS

A BALLOT QUESTIONS ON PROPOSED CHARTER AMENDMENTS

Mr. Roosa said the council needs to hold two public hearings on the ballot. Mr. Isler said it looks like #1 and #3 conflict. But Mr. Roosa said #3 could apply even if you have districts. If there were four candidates running in a certain district, the top vote-getter would win and it would eliminate runoffs. Public hearings were set for August 4 and August 18.

B SHERIFF'S AGREEMENT

Mr. Roosa reported that the county attorney cannot meet with us until after the 29th to discuss the agreement with the sheriff. It will be put on the agenda for August 4.

XII PUBLIC COMMENT

A JOHN MULHOLLAND

Mr. Mulholland said the Council created the LPA by ordinance and named the members. The Council set the date for completion of the comp plan at 18 months. He is surprised to hear that they are causing confusion. Perhaps they are not communicating well enough. They are working for the Council. Mrs. Segal-George agreed to do the job as the LPA attorney and at a bargain price, and he feels she is doing a terrific job.

B BOB GAYDOS

Mr. Gaydos thanked the mayor for the recognition for cleaning the bridge. But he said the Town has a big contract to clean up Times Square, but the curbs are still dirty and there is a big hole in the sidewalk at the Lani Kai. If the Town can pick up garbage on Times Square, maybe they can sign

another contract to pick up garbage on his street. There is garbage out constantly. He contacted solid waste and no one cares.

C JOE WORKMAN

Mr. Workman is a resident on the back bay and would like to be a member of the new citizen's advisory committee. He thinks they should answer directly to the council, not the LPA.

D BOB YOUNG

Mr. Young thanked the Council for serving as Council members and for the staff and for the LPA. He wanted to make sure they know they are appreciated. He has put together a directory on behalf of the Condominium Associations of Fort Myers Beach. It contains the names and addresses of the condos they are associated with, in case the Town needs to contact them in an emergency. It also includes the number of units, the number of year round residents, and the number of residents who need special care. It also lists each of the management teams. Their association has 15 members, representing 1100 units, and they are still growing. Only about 10% of the occupants are year round residents.

E CEIL SPUHLER

Mrs. Spuhler still is concerned about water enforcement by the sheriff's department. She is on the beach all the time and she has not seen him at all. The jet skiers are running between the buoys and the beach. They are also using the buoys as pylons to race around, and they are scaring the swimmers. She has a whistle she blows to make them move out. The Town is paying \$6000 for enforcement and we don't see them. She asked if the Town has a schedule of when they are supposed to patrol and a list of citations they are writing. Mrs. Segal-George answered that the Town does get reports, but for the last two weeks the sheriff has said his boats are broken. We are not paying him in the meantime. She also understands that there are hand-launchings of jet skis at private beaches all up and down the beach. The Town will need to do something about it. The jet skis are still available for patrol if the sheriff will use them. We also might contact Sanibel to see if they will patrol under a contract.

Mr. Reynolds mentioned the parasailers that got hit by lightening in Naples. He has seen the parasailers on Fort Myers Beach taking up people with a storm coming in. Mrs. Segal-George said their captain's license is at stake if anyone reports them, because captains are held to stricter standard.

XIII ADJOURNMENT

Mr. Reynolds moved adjournment. The meeting adjourned at 8:50 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 20, 1997**

NationsBank Building, Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, October 20, 1997 at 3:00 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Mayor Cereceda.

IV PUBLIC COMMENT ON AGENDA ITEMS

A LENA HEYMAN

Mrs. Heyman, a member of the LPA, wanted to tell the Council that she voted no on Eckerds because of safety. The cut in the road onto Estero will create a 4-way turn. According to our traffic consultant, that will make 24 possible collision points. There are many bike riders in that area and she does not want to see a pedestrian or bike rider killed. She is not against Eckerds, but she wants to see the traffic exit through Lenell. She also does not think they need a drive-thru.

B JACK HEYMAN

Mr. Heyman attended the LPA meeting and he is also concerned that the Lenell area is a much busier area than it seems at this time of year. It is as busy as Times Square. Every time a road crosses a sidewalk, you have the potential of killing a pedestrian. He would like to see a stop light at the Lenell intersection. It would cut speeding on Estero and allow Eckerds to use Lenell as an exit. In addition, delivery trucks should not be allowed to unload on the street.

C CLETE VAN NOCKER

Mr. Van Nocker lives at Island Winds and is against the variances for Gullwing. They should not be allowed to build any more than is permitted there now. He also thinks there are only 1.6 acres at that site. The board of his condo sent a letter in support of Gullwing, but none of those board members live in Florida and the owners of his building weren't consulted.

D RAY MERTENS

Mr. Mertens is not for or against Eckerds. But he is concerned about the concept of rezoning to commercial. The Council has shut down small business people on commercial zoning. He thinks that if he tried to put a restaurant and bar in that location, he would be told it wasn't zoned commercial. He said they must be fair to all.

V PUBLIC HEARING – DANIEL REINFRIED (GULLWING, 6620 ESTERO) 97-08-063.05V

Beverly Grady, attorney for Sunstream, said that the decision for the Council is whether the requested variances will be better for the town, cause less density, and be better for the neighborhood than the project that is currently approved. The property has 4.05 acres, which would mean 48 hotel units would be permitted under current zoning. The existing plan has 100 units already approved, which is 52 units over what could be approved today. It has a 150-seat restaurant with bar and lounge and 12,000 sq. feet of convention space. It includes an 8-story parking garage and a 7-story hotel. It fills the entire property from setback to setback. Sunstream's request today is for 66 luxury units, which will be 11 stories on the rear of property, open space for a pool, and a one-story parking over tennis courts instead of the parking garage. There will be no restaurant and no convention facilities. In order to accomplish this plan, they are requesting height and setback variances, a variance in the permitted size of unit, and a variance in the density allowed from 48 to 66 units. Allowing this variance will permit 18 units over density instead of 52 units over density. The building will be no wider but will be taller. Today the building height allowed would be 76 feet, and they are asking for 98.5 feet. But it will be lower than the surrounding buildings. It

will be a luxury hotel and will have less impact on the neighborhood. The LPA has recommended approval of the four variances. Nannette Hall, transportation engineer, was sworn in and stated her credentials. She handed out a table on trip generation comparisons. The current hotel would generate a total of 164 trips and the new proposal would generate 75 trips. She stated that she took the conservative viewpoint when arriving at these figures. She used the assumption that the convention facilities would cause no extra trips other than what is included in the hotel guests. They also added extra trip generation for the office space in the new proposal, so it is double-conservative. R. J. McCormack, architect, was sworn in and stated his credentials. He showed an aerial photograph of the footprint of Gullwing as it is now permitted. The proposed footprint would be much smaller. He also showed a comparison of height between the two neighboring buildings. Island Winds is 134.75 feet from NGVD (13 stories), and Pointe Estero is 152.16 feet (16 floors). They propose Gullwing at 98.5 feet (11 stories). There will be 6 units per floor, with a maximum of 1975 sq. feet. Mary Ann Monsrud of Sunstream handed out a paper of examples of the size other luxury hotel units in other cities.

Pam Houck of Lee County Development Services, was sworn in. She said that the most important question is whether, according to Policy 5.1.5, it will be consistent with what the Council envisions for the area. The staff recommended denial although the LPA approved with conditions. Mr. Isler questioned whether the accreted land that has allowed that many units really belongs to the landowner or to the public. Ms. Houck said renourishment does not allow landowners to use the extra land for density considerations, but naturally accreted land is allowed to be considered. Mr. Isler said he thought it was strange to allow consideration of land that cannot be built on because it is past the coastal construction line. Mr. Reynolds expressed concern that if we approve it, we are approving anyone to use the public beach. Ms. Houck answered that they are not treating this any differently than any other property in the county. Mr. Roosa said the re-survey is just for information because the council is not voting on the size of the property. A variance would still be allowed no matter which survey you use. It will have no impact on the public beach. Mayor Cereceda asked if 100 units is always more dense than 50 units that are so large that they may have more people in them. Ms. Houck answered that from a planning and zoning view, the answer is yes. They do not do the calculation per person in a room. Mr. McCormack said that this plan allows for 107 parking spaces, all on ground-level. Before it was an 8-story garage but he does not know how many spaces that was, because he was not the architect for the original design.

Mayor Cereceda opened the public hearing.

A JAMES MARVEL

Mr. Marvel was sworn in and he handed out information to the council. He said the new building will be only 5.5 feet lower than Island Winds. They have lowered the number of units but they have tripled the size. It will be 11 stories over parking and 19 feet above sea level, which is the equivalent of 13 stories. It is the height that he is objecting to. He lives next to this property and is directly affected. He now has a gulf view, which will no longer be there, and he will face the wall of this new building. Fairview Isles and Seawatch wrote letters in support of Sunstream, but they are not directly affected. Pointe Estero is owned by Sunstream, so they would not be opposed. Eight out of nine board members at his condo live in the other building that is not next to the property. Everyone he spoke to in the south building is opposed. The lot is too small for that size building, especially if you don't count the accreted beach. His property values will go down considerably.

B MARY ANN MARVEL

Mrs. Marvel stated that she lives at Island Winds. If a person has two acres and they say they have four acres, they are still only paying taxes on 2 acres. She has a beautiful view now, and if the Council allows this building, she will be looking at a brick wall the rest of her days.

C AL DULCHAVSKY

Mr. Duschavsky, stated that he is president of Seawatch-on-the-Beach, a time-share facility. When this proposal for the change came in, he told the manager to ask the owners what they think. Every one was for the change.

D JACK CAPPS

Mr. Capps stated that he is representing Fairview Isles. The lot is empty now and is an unsightly garbage dump. They have approval for a convention hotel, which is also unacceptable. They have been looking for something in between. Their association strongly approves the new plans. His view will be blocked too, but that is the wheels of progress. The grounds of Pointe Estero are maintained beautifully so they have no problem with approval of Sunstream for the project.

E BOB MARKELZ

Mr. Markelz lives at Bay Beach which is not too far from this site. He envisions a huge building with hundreds of automobiles. He already has trouble getting to the north end of the island. This will add to the traffic trouble.

The public hearing was closed.

Mr. McCormack responded to the question of property values. After this project is built, it is his opinion that the surrounding property values will be higher because it will produce one-half the traffic, the building will align with the other buildings, it will not include an 8-story parking garage, and it will not block the view as much as the one that is permitted now.

Ms. Grady reiterated that because there are already development rights on the property, no one will come in and build at the current regulations. Sunstream is willing to take reductions anyway, though.

Mr. FitzSimons asked if there had been any consideration of giving an extra access to the gulf for the public. Ms. Grady said that Sunstream would be willing to accept a condition that a 5 foot walkway easement for public beach access be added, but the LPA has put in a buffering condition that would have to be considered. Mr. Isler said we are at a critical point already and it seems to be a choice between two bad choices. The public will pay in their quality of life. He asked if Sunstream can take a floor away and go down to 60 units and lessen the impact in some way. Ms. Grady said they feel they have already cut the impact on the Town by about 50%. Mr. FitzSimons said that under the circumstances, he can't help but think that we as a town are better off with this proposal. Bigger units works in our favor because they bring higher dollar value and that will mean a higher quality of life to the residents, including the ones immediately adjacent to the property. He doesn't think that we can do much better than this unless the town buys the property itself.

Motion: Mr. FitzSimons moved that the variance requests be granted, with the additional conditions added that a 5-foot public beach access be added and restricting the floor plan to what was indicated today. Mr. Murphy seconded the motion. Mr. Murphy said it is true that a few people in Island Winds will be affected. Some of those people bought thinking there would be a 7 story building built next to them and now it will be 11 stories and they will lose the view they enjoy. He feels for those people, but he feels that it is the best alternative we have in the big picture of the town. We already have one convention center being built on the beach and he doesn't think we can support another one. Mr. Isler said it is a no-win decision. We have heard from the next door neighbors, but we haven't heard from the community at large that the Council members are supposed to represent. But he still cannot vote for the change. Mr. Reynolds said he would like it to go back to the LPA and the county for reassessment. He cannot support it because it is too big a building for such a small lot. **Action:** The vote was as follows: Mr. FitzSimons, aye; Mr. Isler, nay; Mr. Reynolds, nay; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

The council took a break at 4:55 PM and reconvened at 5:09 PM.

VI PUBLIC HEARING – FIRST UNION NATIONAL BANK OF FLORIDA, REP. BY THE SEMBLER CO., IN REF TO ESTERO BOULEVARD/LENELL ROAD CPD (ECKERDS) 96-12-206.02Z 03.01

Mr. Basinait said he planned to give a presentation based on the differences between what has already been approved and what they are proposing today. Eckerds cannot build the previously approved plan. If the unadopted draft community design is not applied, their concept master plan can be approved. He submitted Exhibit A (the concept plan of the current proposed plan, Exhibit B (the schematic master concept plan), and Exhibit C (the concept plan that is already approved.) Mr. Tim Keene of Keene Engineering, was sworn in and stated his credentials. Mr. Keene spoke about the differences between the plans. The new plan has two access point on Estero, but the approved plan has three access points. They are now adding a sidewalk on Lenell and will widen Lenell to three lanes. The new plan has a sidewalk around the circumference on the north and east, a buffer zone, and two sidewalks to the Estero Cove parking lot if they want it. He said that it is in compliance with existing comprehensive plan and the existing land development code. They are asking for the following deviations: 1. Pavement setback from 15' to 9.8' adjacent to Cap Plaza. 2. Deviation to allow 35% of total open space to be used for pedestrian ways and impervious surface to allow the paver system in the front. 3. A deviation to eliminate the requirement for an 8' berm. They still will use a berm, but not that high. He said that staff has

recommended approval of all three deviations. Mr. Keene stated that he has attended a traffic committee meeting and spoken with the traffic engineer that has been employed by the beach about traffic calming. He said the engineer has come to the conclusion that traffic calming will not work on Estero and that on-street parking is probably not going to be workable.

Dave Moore was sworn in and stated his qualifications as an architect. Mr. Basinait showed three renderings for the design, exhibits D, E and F. He also showed exhibits G and H showing renderings of how the building will fit into the neighborhood. Mr. Moore described exhibits D, E and F. They will use a metal roof, add some towers, add cupolas, and add windows on the pedestrian level to allow light up high, but display windows down below. Along Lenell they will also add the same two types of windows. They have added some façade along the side to soften the blank walls. It will be heavily landscaped along the areas without windows. There will be pedestrian pavers along Estero, with benches, bike racks, and crosswalks. He said that the LPA has viewed exhibits D, E, and F and approved those renderings, and that Eckerds is willing to build substantially according to those renderings.

Ted Links, traffic engineer, was sworn in and stated his qualifications. Mr. Links spoke about traffic patterns and safety of the two plans. There is a reduction of one cut on Estero. The pedestrian plaza allows you to get to an area for entrance to the store. On the north side, pedestrians from the condos will only cross a one-lane, one-way driveway. The driveway will not be in conflict with the parking for the store. Lenell exiting will be two lanes and will be safer and faster. There will also be a left turn lane into Eckerds. Even if someone unloads a truck in one lane, there will still be two. Backing out vehicles onto Lenell could be a safety factor. The draft design element is supposed to make everything as pedestrian friendly as possible since traffic is such a problem. The idea is to bring pedestrians as close to the store as possible. The new plan only has one lane of parking between Eckerds and Estero and eliminates one driveway on Estero. It is his opinion that exhibit A is better from a safety standpoint than the approved plan.

Chip Block was sworn in and stated that it is the decision of the council whether to follow the current comp plan or the draft plan.

The public hearing was opened.

A LARRY PIERCE

Mr. Pierce was sworn in and stated that he lives on Lenell Road and he feels that the applicant has cooperated with the neighborhood and listened to them and taken it into their planning. He is fully in support of the plan as presented.

The public hearing was closed.

Mr. Basinait said they are seeking to move the building from the corner out away from the intersection, about 50 feet. The draft design element is only a draft and has not been adopted and cannot and should not be used in their deliberations today. He cited the Florida statutes and legal cases that state that you must use the comprehensive plan that is in effect. They have made as many changes as possible to incorporate as many of the ideas as possible. They handed out letters from neighboring groups that are in favor of exhibit A. They have made it more pedestrian-friendly, added brick pavers, stop signs, bike racks, etc. to promote pedestrian safety. Eckerds has reviewed exhibit D, E and F and they are prepared to construct according to those renderings. He would like to add those renderings as a condition of approval. They will add improvement to Lenell Road. This is a transitional design for the new design at Santini Plaza if they decide to go with it. But it will also allow the town to go in another direction if they should decide to at a later date. He mentioned the new conditions to the resolution that he is proposing, which the Council has already received in their packet. In addition, he would like to make the following changes: delete condition #18 which deals with approval of design features and signage (they will not be seeking any deviations from the land development code); approve design features as shown in Exhibit D, E, and F; Lenell Road improvements as indicated on the Master Concept Plan; the sidewalk on the north and east be considered discretionary if Estero Cove wants them.

Mr. Roosa said he is inclined to agree that the Council is limited when making approvals to the existing comp plan. However in this case, the applicant at the time of approval consented to those changes, so the Council can set changes on any development plan that the applicant will consent to. If this were a fresh application and the applicant insisted on following the existing comp plan, they would have to apply it.

Mr. Reynolds said he has received many letters and that Eckerds has done a lot of work, and he sees many advantages to the new plan: backing into the street has been eliminated, they will make Lenell into three lanes, and parking will serve the customers better.

Motion: Mr. Isler moved that the plan as presented be approved with the added conditions. Mr. Reynolds seconded the motion. **Discussion:** Mr. FitzSimons said the major difference between Exhibit A and C is that we are a town now. Now we feel we have the right to establish a direction, and that direction is of a small town character which we are trying to save from extinction. We want to do something better and something we can be proud of. We hired people to help us get back that small-town feel, and they tell us one way is to move buildings to the street and put parking in the back. Without a vision we have nothing. He thinks we should stay with that vision and he does not think we are asking the applicant too much to do it. Mayor Cereceda said we are charged with looking to the future. We have to look at our vision and follow it. If we were happy with the comp plan we wouldn't be a town. She feels we have to listen to the people on the island as a whole, not just the ones who live next door. Three hundred people came to a meeting and worked out a vision. Mr. Isler said he feels strongly that Eckerds provides a service for people who live here so they don't have to go off island to get them. He attended the workshops and he doesn't like the way they happened. They were told to dream big, but they never got back to what is do-able and practical. It was never his vision to move buildings to the street. This new plan is so clearly superior and does incorporate many of the things that were discussed in the plan regarding pedestrians. It will be an asset to the community. Mayor Cereceda asked Mr. Basinait about the Eckerds in Naples that is built on the corner. Mr. Basinait said that that store is not meeting marketing expectations. It is not as viable. Mr. Reynolds said he felt like the safety factor is the most important. Mr. Isler said all the phone calls he has received prefer the new plan. He feels the people have clearly spoken on this issue. **Action:** Mr. FitzSimons, nay; Mr. Isler aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, nay. The motion carried.

VII PUBLIC HEARING – ANTONINA AND SHARON RIGBY (RIGBY'S HEALTH SHOPPE, 1188 & 1190 ESTERO) 97-07-226.05V

Nina Rigby was sworn in and stated that she has lived here since 1965. Mrs. Case bought the building in 1969 and had it remodeled and it is still the same. They have never had a problem with parking. The LPA approved the request with the condition that she have an agreement for two extra parking spaces off-site. Ms. Houck stated that they are requesting a variance from six to allow for the existing four spaces. It is currently a real estate office with two dwellings upstairs. It lawfully exists as a non-conforming structure. They want to change the use to a health food store. The staff recommends approval because of the unusual circumstances and they recommend three conditions: limiting commercial uses to the site plan dated 8/26/97, limiting the commercial uses to those that require one space for every 200 sq. ft., and an agreement of two off-site parking spaces.

The public hearing was opened. There being no comment the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the request be approved with the stated conditions. **Action:** Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Isler, aye; Mr. FitzSimons, aye; Mayor Cereceda, aye. The motion carried.

VIII PUBLIC HEARING – JANE B. PLUMMER (310 MADISON CT.) 97-08-046.05V

Mayor Cereceda disclosed that she has talked with Ms. Plummer and visited the site.

Ms. Plummer was sworn in and stated that she would like to raise her fence to 6 feet because she is on Shell Mound and has no privacy. She also would like to put her pool in a place where it would be safer for her children. Also her house is already non-conforming on one corner. She feels like she has extraordinary conditions that are not her fault. She has 27 names from neighbors stating they do not have a problem with the placement of the pool. Ms. Houck stated that the three variances are for the pool to come within 2 feet of the road right of way, the deck of the pool to be built up to the seawall, and the fence to be increased to 6 feet in height. The staff recommends denial because they did not find extraordinary conditions. The spot where the pool could be placed in compliance already has a pool underneath a concrete slab. Ms. Plummer said she consulted six different pool companies, and the cost was going to be prohibitive.

The public hearing was opened. There being no comment, the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the variances be approved as conditioned. **Discussion:** Mr. Reynolds said he has a problem with a 6-foot fence along Shell Mound.

Action: Mr. FitzSimons, aye; Mr. Isler, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

IX PUBLIC HEARING – PETITION TO VACATE – PATRICK C. HUNT, AGENT FOR AXEL AND CORNELIA SCHULTZ (LAGOON EASEMENT BEHIND 201 SAN CARLOS BLVD) 97-09-042.03R

Patrick Hunt was sworn in and stated that the seawall was constructed in the right of way and is in disrepair. He needs this vacation in order to repair the seawall.

The public hearing was opened. There being no comment, the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the petition to vacate be granted. The motion passed unanimously.

X PUBLIC COMMENTS

A JENNIFER KAESTNER

Ms. Kaestner asked the council members to begin to look into getting our own law enforcement officers. At an earlier meeting she had talked about a body piercing studio that also sells drug paraphernalia (which is not illegal.) They felt like if they addressed the age of kids being body-pierced, it would give the sheriff's deputies a reason to go and clear out young people from those shops. Now in the newspaper, we find out that the deputies are distributing porno tapes and flushing marijuana down the sinks. We need to look into having our own law enforcement. She realizes it is a complicated process but it is time to look into it.

XI ADJOURNMENT

The meeting adjourned at 6:52 PM.

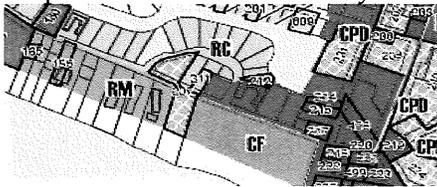
Respectfully submitted,

Peggy Salfen
Recording Secretary

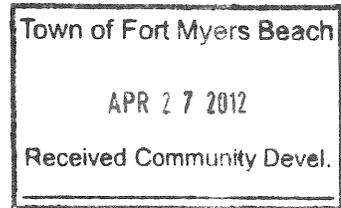
Case # FMBDCI 2012-0002
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

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: CVS/pharmacy CPD Amendment
Authorized Applicant: Holiday CVS, L.L.C.
LeePA STRAP Number(s): 03-47-24-W1-00007.0000

Current Property Status: CVS/pharmacy
Current Zoning: CPD
Future Land Use Map (FLUM) Category: <i>N/A Pedestrian Commercial</i>
Platted Overlay? <u> </u>yes <u> </u>no FLUM Density Range:

JRO

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input checked="" type="checkbox"/> Planned Development Amendment	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):	Holiday CVS, L.L.C.		
Address: Street:	One CVS Drive		
City:	Woonsocket	State:	RI Zip Code: 02895
Phone:			
Fax:			
E-mail address:			

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

<input type="checkbox"/>	Owner (indicate form of ownership below)		
<input type="checkbox"/>	Individual (or husband/wife)	<input type="checkbox"/>	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:	Burt L. Saunders, Esq.		
Mailing address: Street:	5551 Ridgewood Drive, Suite 101		
City:	Naples	State:	FL Zip Code: 34108
Contact Person:	Burt L. Saunders or Daphnie Ricobene		
Phone:	239-598-3601	Fax:	239-598-3164
E-mail address:	burt.saunders@gray-robinson.com daphnie.ricobene@gray-robinson.com		

D. Other agents:

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

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

Case # _____
 Planner _____

Date Received _____
 Date of Sufficiency/Completeness _____

PART II – Nature of Request

Requested Action (check applicable actions):

<input type="checkbox"/> Special Exception for:
<input type="checkbox"/> Variance for:
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input checked="" type="checkbox"/> Planned Development
<input checked="" type="checkbox"/> Rezoning (or amendment) from CPD _____ to: CPD _____
<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 checked="" type="checkbox"/> Other (explain): This Amendment is a request to change the hours of operation

from 8:00 A.M. - 9:00 P.M. to 7:00 A.M. til Midnight.

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
	Application for Public Hearing, Part V, Section B. Boundary Survey

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?
[] Yes [X] No
If yes:
Subdivision name:
Plat Book Number: Page: Unit: Block: Lot:
If no:
Attach a legible copy of the metes and bounds legal description, with accurate bearings and distances for every line, as Exhibit 5-1. The initial point in the description must be related to at least one established identifiable real property corner. Bearings must be referenced to a well-established and monumented line.

B. Boundary Survey

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

03-47-24-W1-00007.0000

D Property Dimensions:

Area: 54, 822 +/- sq. ft. of land	square feet	acres
Width along roadway:	feet	Depth: feet

E. Property Street Address:

7001 Estero Blvd., Fort Myers Beach, FL, 33931
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F. General Location of Property (from Sky Bridge or Big Carlos Pass Bridge):

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
So <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 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 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 checked="" 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 B. NULMAN ASST SECRETARY OF HOLIDAY CUS, L.L.C. 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.

[Handwritten Signature]
Signature ASST. SECRETARY

Michael B. Nulman
Assistant Secretary

Typed or Printed Name

State of Rhode Island
County of Providence

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

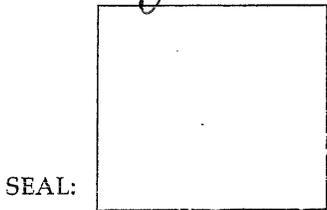
before me this 12th April 2012 Michael B. Nulman
(date) (name of person under oath or affirmation)

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

as identification.

[Handwritten Signature: Kelly A. Burns]
Signature of person administering oath

Kelly A. Burns
Notary Public
State of Rhode Island
My Commission Expires **02/04/2015**
Typed or Printed Name



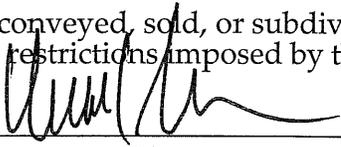
PART VI – Affidavit

**Application Signed by a Corporation, Limited Liability Company (LLC),
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

See attached explanatory notes for instructions

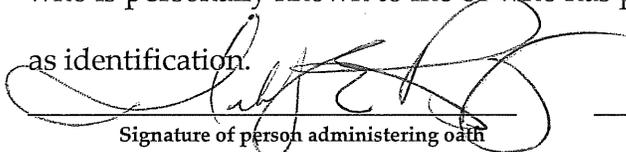
I, Howard Margolis, as a MEMBER
of CLEVELAND MEADOWS LLC, swear or affirm under oath, that I am
the owner or the authorized representative of the owner(s) of the property and
that:

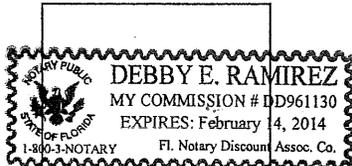
1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any 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

<u>CLEVELAND MEADOWS LLC</u>	
Name of Entity (corporation, LLC, partnership, etc)	Signature
<u>MEMBER</u>	<u>Howard S. Margolis</u>
Title of Signatory	Typed or Printed Name

State of FL
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed
before me this 4/10/2012 by Howard S. Margolis
Date Name of person under oath or affirmation
who is personally known to me or who has produced FL Driver license
Type of identification
as identification.

	<u>Debby E Ramirez</u>
Signature of person administering oath	Typed or Printed Name



SEAL:

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

STRAP#

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

2. If the property is owned by a ^{LLC}~~CORPORATION~~, list the officers and stockholders and the percentage of stock owned by each.

Name, Address, and office	Percentage
HOWARD MARGOLIS	51%
MARCEL MARGOLIS	49%

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust and the percentage of interest.

Name and Address	Percentage

4. If the property is in the name of a GENERAL PARTNERSHIP or LIMITED PARTNERSHIP, list the names of the general and limited partners with the percentage of ownership.

Name and Address	Percentage

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, regardless of whether a Corporation, Trustee, or Partnership is involved, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners, and their percentage of stock.

Name, Address, and Office (if applicable)	Percentage

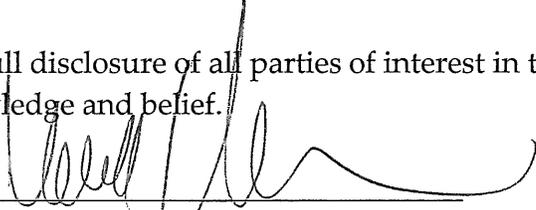
6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

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.

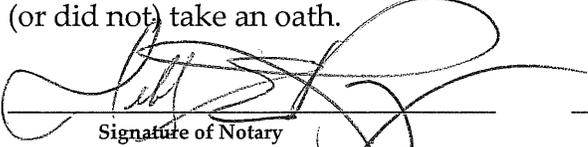
Signature


Applicant

Howard S. Margolis
Printed or typed name of applicant

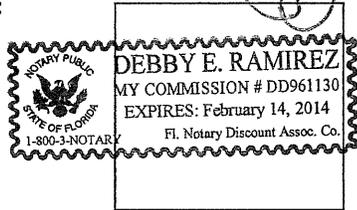
STATE OF Florida
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 10th day of April, 2012, by Howard S Margolis, who is personally known to me or who has produced FL Driver License as identification and who did (or did not) take an oath.

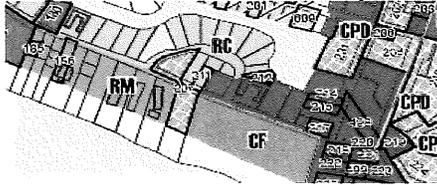

Signature of Notary

Debby E Ramirez
Typed or Printed Name of Notary

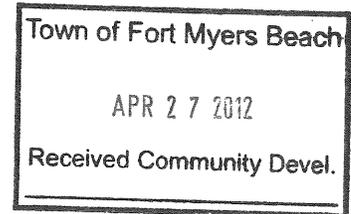
SEAL:



Town of Fort Myers Beach
Department of Community Development



Zoning Division



Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- General Requirements
- DRI
- Planned Development
- Conventional Rezoning
- Special Exception
- Variance
- Appeal
- Other

Administrative Action

- General Requirements
- Planned Dev. Amendment
- Commercial Antenna
- Consumption on Premises
- Forced Relocation of a Business
- Interpretation of LDC
- Minimum Use Determination
- Setback Variance
- Other

Name of Project: CVS/pharmacy CPD Amendment

Applicant: Holiday CVS, L.L.C.

LeePA STRAP Number(s): 03-47-24-W1-00007.0000

Street address: 7001 Estero Blvd., Fort Myers Beach, FL, 33931

Phone Number: 239-598-3601

E-mail: burt.saunders@gray-robinson.com

Specific requirements from which waiver is sought

Section Number	Requirement
	Application for Public Hearing, Part V, Section B. Boundary Survey

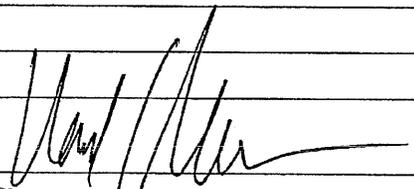
Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

This Amendment is solely for the purpose of extending the operating hours from 8:00 A.M. - 9:00 P.M. to 7:00 A.M. til Midnight.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

Signature _____ Date
 Director's Decision Approved Denied
 Comments:



 Signature *CLEVELAND MEADOWS LLC - MEMBER*

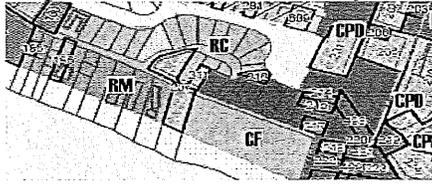
04/10/12

 Date

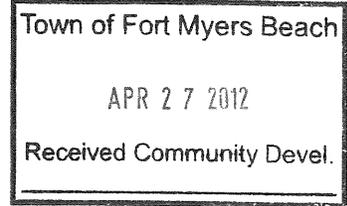
Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division



Supplement PH-D

**Additional Required Information for a
Planned Development Application**

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Project Name: CVS/pharmacy CPD Amendment
Authorized Applicant: Holiday, CVS, L.L.C.
LeePA STRAP Number(s): 03-47-24-W1-00007.0000

Current Property Status: CVS/pharmacy
Current Zoning: CPD
Future Land Use Map (FLUM) Category:
Platted Overlay? ___yes <u>X</u> no FLUM Density Range:

Requested Action:

<input type="checkbox"/> DRI (with rezoning)
<input checked="" type="checkbox"/> Planned Development (also check below)
<input type="checkbox"/> Rezoning from: _____ to: _____
<input checked="" type="checkbox"/> Amendment to Master Concept Plan/attendant documentation

Narrative for CVS/Pharmacy CPD Amendment

Resolution 97-35 approved the rezone from Tourist Commercial to Commercial Planned Development to permit the development of a commercial building intended for the future construction of a pharmacy/drugstore.

Number 2 of the conditions of Resolution 97-35 states "...uses allowed within this development may only operate between the hours of 8:00 a.m. and 9:00 p.m."

The pharmacy, originally operated by Eckerd, was sold to CVS/pharmacy on August 1, 2004. Unaware of the condition regarding operating hours, CVS began operation with hours from 7:00am until midnight.

A disgruntled employee of CVS/pharmacy learned of the condition regarding the hours and contacted the Town of Fort Myers Beach Code Enforcement Department. CVS was informed of the violation and promptly retained Burt Saunders, Esq. from the law firm of GrayRobinson to file the CPD Amendment requesting a change in the condition to allow for extended operating hours. The CPD Amendment was submitted to the Town of Fort Myers Beach on April 27, 2012.

CVS has received positive feedback for their hours of operation from the residents and visitors of the Town of Fort Myers Beach. This is also evidenced by the amount of business incurred between the extended hours of 7:00 a.m. and midnight. Also, the business has been operating with the extended hours since opening in August, 2004 with no negative feedback from the residents.

The extended operating hours will continue to benefit those residents and visitors that are in need of pharmaceutical assistance between the hours of 7 a.m. and midnight.

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