

**1. Requested Motion:**

**Meeting Date:** May 6, 2013

Motion to APPROVE/DENY the request for a variance (VAR2011-0007) from Section 30-153 (b)(1) of the Town of Fort Myers Beach Land Development Code to permit existing signage that exceeds the maximum sign area.

**Why the action is necessary:**

Section 34-87 of the LDC provides that the Town Council shall hear and decide all requests for variances from the terms of the regulations or restrictions in the LDC.

**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:**

Case: VAR2011-0007 Moss Marine Sign Variance

Applicant Emily McDaniel, authorized agent for the subject property owner, George Freeland, has made application for a variance from Section 30-153(b)(1) Town of Fort Myers Beach Land Development Code.

The original Staff Report was written in August of 2012 and the first public hearing on the application for a variance was at the August 2012 LPA meeting. The LPA granted the applicant three continuances, in order to provide the applicant more time to develop a sufficient variance application. At the time each of these continuances was granted by the LPA, the LPA, and Staff, gave the applicant sufficient direction on deficiencies in the application. The applicant, however, failed to satisfy those deficiencies with each resubmittal. It is, therefore, unclear what the specific variance request is.

The LPA held the fourth public hearing on the request at their March 12, 2013 meeting. Staff presented its case along with a recommendation of denial and the applicant presented its case for approval. LPA had a question and answer period, discussed the history of this application, required documentation, justification for the request and ‘minimum variance necessary.’ Ultimately, the LPA voted 7-0) to recommend DENIAL.

**Attachments:**

- Tab A – Draft Council Resolution, 13-08
- Tab B - LPA Resolution 2013-002
- Tab C - LPA/HPB minutes from the March 12, 2013 meeting
- Tab D – Staff Memo & Application resubmittal
- Tab E – March 2013 LPA materials
- Tab F – February 2013 LPA materials
- Tab G – October 2012 LPA materials
- Tab H – August 2012 LPA materials, including the original August 2012 Staff Report
- Tab I – Resubmitted Application, received 5/10/12
- Tab J – Insufficiency Letter, dated 3/14/12
- Tab K – Original Application received 12/30/11

**6. Alternative Action:**

**7. Management Recommendations:**

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation 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 13-08  
VAR2011-0007 – Moss Marine Sign Variance

WHEREAS, applicant Emily McDaniel, authorized agent and manager for Moss Marine is requesting a variance from Section 30-153(b)(1) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP numbers for the subject property are 24-46-23-W3-00027.0000 and 24-46-23-W3-00026.0020 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 450 Harbor Court Fort Myers Beach, FL 33931, zoned Commercial Marine on the Official Zoning Map and the Marina category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on August 14, 2012 and was continued to a date certain of October 9, 2012; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on October 9, 2012 and was continued to a date certain of February 12, 2013; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on February 12, 2013 and continued to a date certain of March 12, 2013; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on March 12, 2013; 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 34-87.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on May 6, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-002, 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 30-87.

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 and the standards for granting variances, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES/DENIES** the applicant's request for a variance from Section 30-153(b)(1) of the LDC to permit existing signage that exceeds the maximum sign area.

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-87 for granting a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. There **are /are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question **and** the request **is /is not** for a de minimis variance to protect public safety by not obstructing access to public utilities and fire protection facilities.
  
- B. The conditions justifying the variance **are /are not** the result of actions of the applicant taken after the adoption of the regulation in question.
  
- C. The variance requested **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
  
- D. The granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
  
- E. The conditions or circumstances on the specific piece of property for which the variance is sought **are/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

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:

Alan Mandel, Mayor	AYE/NAY	Joe Kosinski, Vice Mayor	AYE/NAY
Jo List	AYE/NAY	Bob Raymond	AYE/NAY
Dan Andre	AYE/NAY		

DULY PASSED AND ADOPTED THIS 6<sup>th</sup> day of **MAY, 2013**.

By: \_\_\_\_\_  
Alan Mandel, Mayor

Approved as to legal sufficiency:

ATTEST:

By: \_\_\_\_\_  
Fowler, White, Boggs  
LPA Attorney

By: \_\_\_\_\_  
Michelle Mayher  
Town Clerk

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
LPA RESOLUTION NUMBER 2013-002  
VAR2011-0007 – Moss Marine Sign Variance

WHEREAS, applicant Emily McDaniel, authorized agent and manager for Moss Marine is requesting a variance from Section 30-153(b)(1) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP numbers for the subject property are 24-46-23-W3-00027.0000 and 24-46-23-W3-00026.0020 and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 450 Harbor Court Fort Myers Beach, FL 33931, zoned Commercial Marine on the Official Zoning Map and the Marina category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on August 14, 2012 and was continued to a date certain of October 9, 2012; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on October 9, 2012 and was continued to a date certain of February 12, 2013; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on February 12, 2013 and continued to a date certain of March 12, 2013; and

WHEREAS, a public hearing on this matter was legally advertised and held before the LPA on March 12, 2013; 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 34-87.

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 variances, 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 **DENY** the applicant's request for a variance from Section 30-153(b)(1) of the LDC to allow a maximum **384.25±** square feet of sign area on the subject property.

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-87 for granting a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

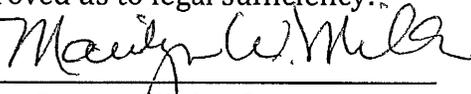
- A. There **are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is not** for a de minimis variance to protect public safety by not obstructing access to public utilities and fire protection facilities.
- B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance requested **is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance **will** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

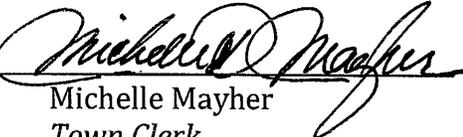
The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Shamp** and seconded by LPA Member **Smith**, and upon being put to a vote, the result was as follows:

Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	AYE	Alan Smith, Member	AYE
Jim Steele	AYE		

DULY PASSED AND ADOPTED THIS **12<sup>th</sup>** day of **MARCH, 2013**.

By:   
Hank Zuba, LPA Chair

Approved as to legal sufficiency:  
By:   
Fowler, White, Boggs  
LPA Attorney

ATTEST:  
By:   
Michelle Mayher  
Town Clerk

**Exhibit A – Legal Description  
Moss Marine**

**Parcel 1:**

Lot 21, Block B, of that certain subdivision known as MATANZAS VIEW, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 40.

**Parcel 2:**

A tract or parcel of land located in Government Lot 1, Section 24, Township 46 South, Range 23 East, on Estero Island, Lee County, Florida, which tract or parcel of land is more particularly described as follows:

From the northwesterly corner of Block 3 of BUSINESS CENTER, a subdivision according to the map or plat recorded in Plat Book 9 at pages 9 and 10 of the public records of Lee County, run northwesterly along a prolongation of the northeasterly line of said Block 3 for 66 feet to the westerly right-of-way line of the County Road; thence continue on the same course, along the southwesterly line of a road 50 feet wide, for 550 feet; thence deflect 90°00' right and run northeasterly, parallel to the aforesaid County Road, along the northwesterly line of said road 50 feet wide for 320 feet to the point of beginning of the lands hereby described. From said point of beginning, run northwesterly along a line perpendicular to the aforesaid County Road for 100 feet; thence run northeasterly parallel to said road to Matanzas Pass; thence run southeasterly along said Pass to an intersection with a line through the point of beginning parallel to said County Road; thence run southwesterly along said parallel line and the northwesterly line of a road 50 feet wide for 150 feet, more or less, to the point of beginning.

**Parcel 3:**

A tract or parcel of land located in Government Lot 1, Section 24, Township 46 South, Range 23 East, on Estero Island in Lee County, Florida, which tract or parcel of land is more particularly described as follows:

From the northwesterly corner of Block 3 of BUSINESS CENTER, a subdivision according to the map or plat recorded in Plat Book 9 at pages 9 and 10 of the public records of Lee County, run northwesterly along a prolongation of the northeasterly line of said Block 3 for 66 feet to the westerly right-of-way line of the County Road; thence continue on the same course, along the southwesterly line of a road 50 feet wide, for 550 feet; thence deflect 90°00' right and run northeasterly, parallel to the aforesaid County Road, along the northwesterly line of said road 50 feet wide for 320 feet to the point of beginning of the lands hereby described. From said point of beginning run southeasterly along a line perpendicular to the aforesaid County Road, for 153 feet; thence run northeasterly, parallel to and 430 feet from the center line of said County Road, for 172 feet, more or less, to the waters of Matanzas Pass; thence run northwesterly along said waters to an intersection with a line through the point of beginning parallel to said County Road; thence run southwesterly along said line for 150 feet, more or less, to the point of beginning.

**Parcel 4:**

A parcel of submerged land in Matanzas Pass in Section 24, Township 46 South, Range 23 East, Lee County, Florida, being more particularly described as follows:

From the Southwesterly corner of Lot 21, Block B, MATANZAS VIEW SUBDIVION, according to the map or plat recorded in Plat Book 9 at page 40, of the Public Records of Lee County, Florida, run North 26°03'00" East along the Northwesterly line of said lot and the Southwesterly line of a dedicated canal right-of-way for 55 feet to the point of beginning of the lands herein described. Said point of beginning being also the point of beginning of the bulkhead line approved by the Trustees of Internal Improvement Fund on July 18, 1967. From said point of beginning run along said bulkhead like Northeasterly, Easterly, and Southeasterly along the arc of a curve to the right of radius 75 feet (chord bearing 71°03'00" East) for 117.81 feet to the point of reverse curvature; thence run Southeasterly, Easterly, and Northeasterly along the arc of a curve to the left of radius 200 feet (chord bearing South 79°50'40" East) for 110.96 feet to a point of reverse curvature; thence run Northeasterly and Easterly along the arc of a curve to the right of radius 200 feet (Chord bearing South 79°50'40" East for 110.96 feet to a point of tangency; thence run South 63°57'00" East for 126.19 feet to a point of curvature; thence run Southeasterly and Easterly along the arc of a curve to the left of radius 50 feet (chord bearing South 82°23'10" East) for 32.17 feet to an intersection with a Northeasterly prolongation of the Southeasterly line of Lot 12, Block A of said Matanzas View; thence run South 26°03'00" West along said prolongation for 35 feet, more or less, to the mean high tide line on the South shore of Matanzas Pass; thence run Northwesterly, Northerly, Northwesterly, Southwesterly, and Northwesterly and Southwesterly along said mean high tide line to the point of beginning.

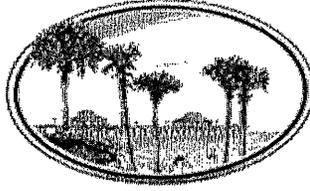
Parcel 5: (24-46-23-W3-00026.0020)

Part of Government Lot 1 in Section 24, Township 46 South, Range 23 East, further bounded and described as follows:

Starting at a concrete monument in the northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown 3 feet southeast from the most southeasterly corner of the MATANZAS VIEW SUBDIVISION as recorded in Plat Book 9, Page 40; thence North 65°W a distance of 200.00 feet to a point and the principal place of beginning; thence continuing N 65°W a distance of 200.00 feet; thence N 25°E parallel to San Carlos Blvd. a distance of 390.00 feet; thence by a curve deflecting to the right a distance of 37.06 feet, said curve having a radius of 67.22 feet and a chord that bears S 86°04'38" E a distance of 36.59 feet; thence S 70°17'05" E a distance of 166.58 feet; thence S 25°W a distance of 418.50 feet to the place of beginning.

ALSO Easement No. 1: Starting at the same monument that is the starting point of the above description; thence N 25° E a distance of 285.00 feet to a point and the principal place of beginning; thence continuing N 25° E a distance of 30.00 feet; thence N 65° W a distance of 200.00 feet; thence S 25° W a distance of 30.00 feet; thence S 65° E a distance of 200.00 feet to the point of beginning.

ALSO Easement No. 2: A 12.00 foot wide strip of land running between the above described property and San Carlos Boulevard and lying within the confines of the following described land: Beginning at the same monument that is the starting point of the above property; thence N 65°W a distance of 200.00 feet; thence N 25°E a distance of 32.00 feet; thence S 65°E a distance of 200.00 feet; thence S 25° W a distance of 32.00 feet to the place of beginning.



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

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, March 12, 2013**

**I. CALL TO ORDER**

Meeting was called to order at 9:00 a.m. by Chair Zuba; other members present:

Al Durrett  
John Kakatsch  
Jane Plummer  
Joanne Shamp  
Alan Smith  
James H. Steele  
Hank Zuba

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

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of February 12, 2013

**MOTION:** Ms. Shamp moved to approve the minutes for February 12, 2013 as presented; second by Mr. Kakatsch.

**VOTE:** Motion approved 7-0.

**MOTION:** Mr. Kakatsch moved to adjourn as the LPA and reconvene as the Historic Preservation Board; second by Mr. Steele.

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**VOTE:** Motion approved 7-0.

Adjourn as LPA and reconvene as Historic Preservation Board at 9:03 a.m.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman noted the subject variance was continued from the last hearing (February 12, 2013) to a date certain of today with a February 25, 2013 deadline for the Applicant to submit to staff for the LPA agenda package information/documentation associated with their Historically Significant Sign request.

**A. HDD2012-0001 “The Big M” Roof Sign**

Zoning Coordinator Chapman presented comments for the “Big M” roof sign, Historically Significant Sign, HDD2012-0001, on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the subject site and noted the location of the subject property was at 450 Harbor Court. She reviewed the request for a designation of the roof sign as a *historically significant sign* per Section 30-57(b)(2) – *Whether the sign provides significant evidence of the history of the product, business or service represented*. She indicated on the aerial view of the subject property the request was for the Big ‘M’ sign (approximately 1,500 square feet) on the roof of the structure. She reported that the applicant did not comply with the LPA’s deadline of February 25<sup>th</sup> to submit any new data or material that would justify the granting of a historical designation for the roof sign [information submitted via email]; however, no direction or summarization document was included with the emailed documents. She reviewed staff’s analysis of the newly submitted information which included but was not limited to a petition called “*Save Our Sign*”. She added that staff could only evaluate the application based upon the information provided by the applicant; and the burden of proof was always placed upon an applicant to submit sufficient justification in order for staff to make a recommendation. She explained that at this point there was not sufficient information to make a recommendation for approval; and staff was recommending denial of the applicant’s request for designation as a historically significant sign.

Mr. Smith questioned the criteria that applicants were held to in the past in order to be granted a historical sign designation.

Zoning Coordinator Chapman explained that applicants were required to meet at least one of the five criteria listed in Section 30-57 [copy included in the agenda packet]; however, the more criteria an application met then stronger the case would be for approval.

Mr. Steele asked if the HPB could discuss and poll all the members on each of the five criteria as it pertained to the variance request.

Zoning Coordinator Chapman responded in the affirmative; however, she requested the LPA to allow the applicant to present her case prior to HPB deliberation.

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Emily McDaniel, Applicant and General Manager at Moss Marine, reported she submitted additional informational items to the Town (i.e. letters and a petition); and that none of the people they asked to sign the petition had refused. She noted that it was her impression that they [Applicant and Mr. Ireland of Carter Outdoor Signs] had reviewed how the application fit most of the five criteria, and that her biggest obstacle was determining the exact year when the sign was painted on the roof.

Mr. Kakatsch questioned the importance of the sign to the Applicant, and the cost estimate of painting the roof to cover the 'M' if required.

Emily McDaniel explained the importance of the roof sign to her, personally and historically; and to the business as a directional sign, an identifier, and a landmark.

Sam Ireland, Carter Outdoor Signs, reported the only option to remove the sign would be to paint the entire roof, and he estimated the cost to paint one side would be \$3,000-5,000.

Ms. Shamp asked if it was the sign or the building that was the landmark.

Emily McDaniel explained her belief that the sign was the landmark.

Mr. Kakatsch reviewed how he and his father flew into Page Field many years ago (1969 approximately); how his father used the 'M' on the roof as a landmark that lined up with Page Field; and his belief that the sign had an important purpose as an aerial landmark for airplane pilots.

Discussion was held concerning the significance of the 'M' on the roof to residents and visitors; the cost to the Applicant to remove the sign; and the 'M' as a landmark when coming over the bridge.

Chair Plummer asked if any Historic Preservation Board Member had ex-parte communication regarding this item. Mr. Durrett – none, site visit; Mr. Kakatsch – none, site visit; Mr. Smith: - none, site visit; Mr. Zuba – none, site visit; Chair Plummer – none, site visit; Ms. Shamp – none, site visit; Mr. Steele – none, site visit.

Ms. Shamp described the background and basis for a past sign variance application for the Holiday Inn as it related to the Town's sign code.

Public Comment opened.

No speakers.

Public Comment closed.

Mr. Zuba told of his conversation with Town historians regarding the Big 'M' roof sign; and indicated the historians could not defend the request for a historical designation of the sign. He referred to and discussed the Town's Comprehensive Plan as it addressed the meaning of 'historic':

- Map of 1986 historic sites; the subject location and Big 'M' sign was not listed.
- Geographic description of historic sites; the subject location and Big 'M' sign was not listed.
- Criteria – the sign was not associated with events or persons or a distinctive character or type, and on an individual basis it was not part of a significant site district
- Architectural criteria – not relevant to the subject sign.

He discussed his belief that if the subject sign was found to be 'historic', it would weaken the definition of 'historic'; however, he questioned if it was really a sign and if it could be considered a 'roof covering'.

Ms. Shamp explained that she still questioned whether the sign or the business was the landmark; and that it was her view that since the business was named the 'Big M Casino' that it made the roof sign a business sign.

Mr. Steele discussed the five criteria and offered his views on if the variance request met each one:

1. Whether the sign was associated with historic persons, events, or locations - **agreed.**
2. Whether the sign provides significant evidence of the history of a product, business or service represented - **disagreed.**
3. Whether the sign was characteristic of a specific historic period - **disagreed.**
4. Whether the sign was an outstanding example of the art of sign making through its craftsmanship, use of materials and/or design - **disagreed.**
5. Whether the sign the sign was a local landmark that was popularly recognized as a focal point in the community - **agreed.**

Mr. Smith concurred with Mr. Steele's comments that the application met with two of the five criteria.

Chair Plummer noted there had not been a quorum at the Historic Advisory Committee (HAC), and questioned if the HPB could take action to make a recommendation without action by the HAC.

Zoning Coordinator Chapman responded in the affirmative that the HPB could make a recommendation.

**MOTION:** Mr. Kakatsch moved that it was hereby resolved by the HPB of the Town of Fort Myers Beach, Florida that they recommend that the Town Council APPROVE the applicant's request for designation as a historically significant sign with the RECOMMENDED FINDINGS AND CONCLUSIONS:

1. Whether the sign is associated with historic person(s), event(s), or location(s);  
AYE

2. Whether the sign provides significant evidence of the history of the product, business or service represented;  
NAY
3. Whether the sign is characteristic of a specific historic period;  
NAY
4. Whether the sign is an outstanding example of the art of sign-making, through its craftsmanship, use of materials, and/or design; and  
NAY
5. Whether the sign is a local landmark that is popularly recognized as a focal point in the community.  
AYE

**SECOND:** Mr. Smith.

**VOTE:** Motion approved 4-3; Ms. Shamp and Messrs. Zuba and Durrett dissenting.

Chair Plummer closed the Public Hearing at 9:35 a.m.

Adjourn as Historic Preservation Board and reconvene as the LPA.

**NO MOTION TO OFFICIALLY CLOSE THE HPB**

## V. PUBLIC HEARINGS

### A. VAR2011-0007 Moss Marine

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Zoning Coordinator Chapman presented comments for VAR2011-0007 Moss Marine Sign Variance on behalf of the Town of Fort Myers Beach. She displayed an aerial photograph of the site and noted the location of the subject property was at 450 Harbor Court. She reviewed the variance request was from Section 30-153(b)(1) which states: *For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area to allow the existing sign area to remain.* She noted the request originally came before the LPA in August with continuances until the most recent discussion at the February 12<sup>th</sup> LPA meeting when the LPA granted another continuance to today's meeting. She reported that the applicant did comply with the LPA's deadline of February 25<sup>th</sup> to submit any new data or material that would justify the granting the variance [information submitted via email]; however, no direction or summarization document was included with the emailed documents. She added that staff could only evaluate the application based upon the information provided by the applicant; and the burden of proof was placed upon the applicant to submit sufficient justification for staff to make a recommendation. She explained that at this point there was not sufficient information to make a recommendation for approval

(i.e. it was unclear as to the total square footage the applicant was seeking, sign locations, etc.). She reviewed the five criteria and discussed how it pertained to what staff was seeking in order to make a recommendation:

1. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is/is not** for a *de minimis* variance to protect public safety by not obstructing access to public utilities and fire protection facilities.
  - a. Applicant has maintained that their 3+ acre parcel and 46,200 square feet of building sides are the 'exceptional or extraordinary circumstances' inherent on the subject property that keeps them from conforming to the standards set forth in Chapter 30.
  - b. Staff does not find that a large parcel or a waterfront business is exceptional or extraordinary; therefore, staff recommended the finding that there are not exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that it does not justify the variance.
2. The conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
  - a. Staff was not able to find any permit records as to when the current and existing wall signs were installed; however, the applicant maintains that he signs were in place prior to the adoption of the original sign ordinance in 1999.
  - b. Staff finds that the conditions justifying the variance are not the results of actions of the applicant taken after the adoption of the regulation in question.
3. The variance granted **is/is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
  - a. The application does not discuss why the existing wall signs, that total approximately 408 square feet, are the minimum necessary. Furthermore, the applicant has not provided a complete inventory and assessment and site plan of all signs on the subject property which makes it difficult to assess the degree of variance actually being requested.
  - b. Therefore, based on limited evidence as to the necessity of the request, staff finds that the variance requested is not the minimum variance necessary to relieve an undue burden.
4. The granting of the variance **will/will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
  - a. The applicant is requesting relief from total sign area requirements of Chapter 30 of the LDC, effectively requesting over six times permitted sign area, per 30-153(b)(1).
  - b. It is staff's opinion that there is not a justifiable reason or hardship that exists on the subject property, and the applicant has not provided any compelling evidence that would justify or permit the granting of a sign area variance by Town Council. Staff, therefore, finds that granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.
5. The conditions or circumstances on the specific piece of property for which the variance is sought **are/are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

- a. With the adoption of the amended sign ordinance and the consequent amortization period for conformity, numerous locations on the beach have pursued variance requests from the amended requirements; however, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including area and prohibited types) and has made a decision to enact and enforce a uniform sign code.

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- b. Staff finds that the circumstances of the specific piece of property on which a variance is sought are general in nature and, therefore, do not demonstrate a verifiable hardship.

She reported staff was recommending **denial** of the Applicant's request for a variance form Section 30-153(b)(1) to allow the existing sign area to remain.

Mr. Durrett discussed his thoughts on how signage on a waterway can be different; how there was a 'boat highway and a car highway'; how the Town might consider looking at waterway highways as a different signage; and the difficulties with directing people on a large parcel.

Ms. Shamp questioned if any additional information was submitted by the Applicant as it pertained to their retail agreement with Shell.

Zoning Coordinator Chapman reported that what staff had received from the Applicant via email was included in the agenda packet.

Community Development Director Fluegel addressed the square footage of the Shell sign; and noted that there was also a height issue with the sign which would need to be brought down to five feet.

Ms. Shamp questioned signage at gas stations on the Island.

Zoning Coordinator Chapman reported that the gas stations on Estero Boulevard have come into compliance with the Town's sign ordinance

Mr. Steele questioned the definition of a sign as it related to '*being within public view*', and that a sign had to '*be in public view from the right-of-way*'.

LPA Attorney Miller explained there was no explicit regulation dealing with that and how the staff had applied a '*reasonableness standard*'; and reviewed the Land Development Code definition of an interior sign.

Mr. Steele questioned 'Exhibit H', shots 1-35, as it pertained to whether or not they were viewable from the right-of-way (i.e. shots #10, #12, #14, #16).

Zoning Coordinator Chapman pointed out that the Applicant was responsible for denoting the location of the signs on the subject property which was addressed at the February meeting. She added that the

Applicant did not provide a site plan as to where the signs were located, and a justification as to why a particular sign (i.e. shot #14) did not apply to the sign code.

Ms. Plummer noted her comments and direction she had given to the Applicant at the February 12<sup>th</sup> LPA Meeting as it pertained to what information regarding their signage should be submitted to the Town; and she noted her disappointment with the lack of information that should have accompanied the sign photographs submitted to the Town (i.e. dimensions, location, etc.).

Discussion was held concerning the lack of information provided by the Applicant to justify the LPA recommending approval of the variance.

Emily McDaniel, General Manager at Moss Marine, held up a document that she reported had been revised to include measurements of the signs and requested actions. She reported she submitted the total square footage of what she was seeking for commercial signage (4 signs: Shell sign, Big 'M' sign – shots #13 & 15, Moss Marine sign on the waterway side – shot #28; for a total of 384.25 square feet). She stated the signs on the waterway would be removed or placed in the window; and everything else she considered to be directional signage because it related to parking (i.e. employee parking, Big 'M' parking, and Moss Marine parking).

Mr. Steele questioned where it addressed specifics of the sign dimensions within the Retail Product Sales Agreement with Shell.

Emily McDaniel reported that information was contained in Section 7.

Mr. Steele addressed Section 7 of the subject agreement and recounted his research through the Shell website regarding 'brand standards' as it pertained to the size of the sign; and that the website did not allow him to have permission to enter into certain sections of the site information.

Emily McDaniel reported that her sign was supposed to be the size it was when installed.

Mr. Steele asked Mr. Ireland when he began to work for the Applicant regarding her signs.

Sam Ireland, Carter Outdoor Signs, reported he began working for Ms. McDaniel on February 25, 2013 at 1:00 p.m.

Mr. Steele noted the staff had previously requested a site plan; and that Exhibit 'I' seemed to be the same version as at the previous meeting; however, some of the shots seemed to be updated since the last meeting.

Ms. Plummer asked if directional signs, as described by the Applicant for the various types of parking, could be identified without advertising.

Zoning Coordinator Chapman reported that she had previously recommended in conversations with the Applicant to submit to staff the total square footage of directional signs with commercial messages on them and clearly include that information with the request for a variance from the maximum area of directional signage permitted.

Ms. Plummer questioned what the maximum directional square footage was permitted.

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LPA Attorney Miller commented there was a glitch; and noted the exempt signs (Section 30-6(a)(8) Instructional Signs) were not to exceed four square feet in area per sign. She expressed her belief that the sign could say 'Big M Marine parking' and it would be exempt as long the sign was instructing it was 'Big M Marine parking'.

Community Development Director Fluegel explained how a site plan indexing sign locations would address the matter of whether or not the sign was instructional.

Mr. Durrett asked how many signs would be permitted.

LPA Attorney Miller pointed out that she had mentioned at a previous meeting that, theoretically, there could be one sign at each parking space as long as it was four square feet and it was instructional.

Mr. Durrett questioned if the Applicant had presented a plan pertaining to signage and had they agreed to what would be removed or changed.

Zoning Coordinator Chapman explained that from the beginning when the Applicant initially applied that staff had gone to the site, and walked and talked with the Applicant about what would be directional signage or commercial signage. She added that the Applicant did start by providing the exhibit that has the shot of each sign, but further iterations of their proposal of what they ultimately and specifically wanted was not included in submittals.

Ms. Shamp discussed her belief that the LPA did not have all the specifics in order to approve the request. She explained her views that from what Zoning Coordinator Chapman reported at the last LPA meeting and from what the LPA had from today that if the LPA denied the request, the Applicant would have to put the ship's store and Moss Marine signs in the windows; they would have as many of the directional signs allowed without the commercial message; and as far as the square footage for the Moss Marine sign that the only argument the Applicant presented was due to the size of the buildings. She noted that there were other big buildings on the Island and that they did not receive approval for bigger signs for that reason.

Discussion ensued regarding whether to grant a continuance or a denial of the variance request.

Community Development Director Fluegel shared staff's perspective regarding a recommendation of denial; noted if the variance was denied that staff would move forward with scheduling the matter for

Town Council; and that if the LPA recommended denial it would send a clear message to the Applicant and would also give the Applicant another window of opportunity to work on a complete sign package.

Discussion continued regarding whether to grant a continuance or a denial of the variance request; and the lack of information received from the Applicant.

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**MOTION:** Ms. Shamp moved regarding Resolution 2013-002 that the LPA recommends that the Town Council **DENY** the applicant's request for a variance from Section 30-153(b)(1) of the LDC to allow a maximum 384.25 square feet of sign area per business on the subject property; with regard to the **RECOMMENDED FINDINGS AND CONCLUSIONS:**

A. There **are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, **and** the request **is not** for a *de minimis* variance to protect public safety by not obstructing access to public utilities and fire protection facilities.

B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance requested **is not** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance **will** be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

**SECOND:** Mr. Smith.

Ms. Shamp noted her belief that Moss Marine had flexibility that would allow them to get a sign package that would work for the needs of the property within the Town's code.

**VOTE:** Motion approved; 7-0.

Ms. Plummer suggested to the Applicant to take Exhibit 'I', go through it and include the measurements (i.e. height, size, etc.) and make sure to include whether or not they were willing to change the sign or how it would be changed; and have that dimension for a total dimension on directional and commercial signage, warning signs, and advertising. She added that they should label clearly what would happen to an existing sign, and include total square footage and the location on a map.

## **VI. LPA MEMBER ITEMS AND REPORTS**

Ms. Plummer – reported the Shrimp Festival was fabulous and it was a great family day.

Mr. Steele – requested to be excused from the next LPA meeting.

Mr. Smith – reported he participated in the barbeque in the mangroves event last week and noted there was a significant glitch with the event parking. He thanked Mr. Durrett for last minute work to make parking available at his facility, and for volunteering his staff for performing the parking job.

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Ms. Shamp – congratulated the Public Safety Committee on the installation of the safety island. She described her recent experience at S.O.B. as it related to the outside dining; how she was informed that customers were not using the outside dining because they did not like people walking past and looking at their food; and a discussion with the business management about how they were looking forward to their expansion towards Third Street. She noted to staff an article in The Naples Daily News – *Sandy Damaged Homes Marketed at Bargain Prices*.

Mr. Kakatsch – no report.

Mr. Durrett – noted his belief that February was a fabulous month for Fort Myers Beach with activities/events and for the safety features installed on Estero Boulevard on March 1<sup>st</sup>. He thanked the Department of Transportation for approving the site for the pedestrian refuge island.

Chair Zuba – noted the pedestrian refuge island installed on Estero Boulevard was significant and thanked the Public Safety Committee for their work. He recognized Mr. Butcher from the audience.

Bruce Butcher reported that the Public Safety Committee recommended the pedestrian refuge island on Estero Boulevard, the Town Council approved it, and the Lee County DOT funded and installed it.

Mr. Durrett – reported the Public Safety Committee was working to get the DOT to install more flashing light signs for crossings on Estero Boulevard.

Chair Zuba asked if Mr. Butcher knew the cost of the pedestrian refuge island.

Bruce Butcher reported it cost approximately \$25,000.

Discussion was held concerning the pedestrian refuge island on Estero Boulevard.

Mr. Durrett – reported that Mr. Butcher had come up with 10 exceptional ideas for Estero Boulevard for the Public Safety Committee to discuss at their meeting tomorrow.

Chair Zuba – thanked LPA Attorney Miller for a fine seminar on the Sunshine Law; and thanked Messrs. Steele and Kakatsch for attending the last Ad Hoc Committee meeting about housing and rehabilitation. He noted that they would follow-up with the County about some rehab issues.

Ms. Plummer requested an update on the Estero Boulevard Workshop held on February 28<sup>th</sup> which she was unable to attend.

LPA Attorney Miller reported that the plans were displayed, there was no presentation, but County staff was available to answer questions.

Mr. Durrett recounted his disappointed experience and opinion of the Workshop; noted that many people attended; and mentioned that the plans did not indicate any future sidewalks or crosswalks.

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Mr. Kakatsch recalled his disappointed experience and opinion of the Workshop; and how the County was seeking input from the residents on such matters such as but not including roundabouts.

Ms. Shamp recalled her disappointed experience and opinion of the Workshop; and discussed the inadequate treatment of bicycle lanes along Estero Boulevard.

Discussion ensued regarding the Estero Boulevard Workshop.

## **VII. LPA ATTORNEY ITEMS**

LPA Attorney Miller – no items or report.

## **VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Community Development Director Fluegel reviewed his experience and opinion of the Estero Boulevard Workshop; and noted his frustration with the County requesting input from the Town regarding design work, yet placing in an interlocal agreement wording that the County would be completely responsible for the design work.

LPA Attorney Miller reported that the Town had requested language in the interlocal agreement that the Town would have the right to request enhancements (i.e. underground electric), but the County was not agreeable and wants to have full control.

Discussion ensued regarding the Town's right to request enhancements on Estero Boulevard; and the County's lack of funding for the CIP for Estero Boulevard improvements other than one mile.

Ms. Plummer recounted her experience as a pedestrian trying to navigate Estero Boulevard last weekend during the Shrimp Festival with children in a double-wide stroller and a person in a wheelchair.

LPA Attorney Miller explained how she monitored the BOCC agendas items as they related to the Town.

Community Development Director Fluegel reported staff held a workshop on outdoor displays with merchants last week as a result of a previous Code Enforcement comprehensive sweep generated by complaints about the displays. He explained that one of the things they heard from the merchants was that they wanted more outdoor display area; and after 'season' they agreed to have a working dialog

with a task force group of the retail vendors. He discussed what the current code allowed outdoors and recapped highlights from the workshop.

LPA Attorney Miller noted that it was suggested at the outdoor display workshop that 'one size did not fit all' and that some of the merchants suggested different regulations for different areas of the Town.

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Ms. Shamp questioned how people who twirled signs on the sidewalks were handled in the code.

Community Development Director Fluegel explained at this point the sign twirlers were covered under 'free speech'.

Mr. Kakatsch asked if the Town was still power-washing the bridge.

Community Development Director Fluegel explained his belief that a portion of the bridge was done but then it had to be rescheduled possibly due to weather issues; and noted that the bridge was not going to be re-painted at this point.

## **IX. LPA ACTION ITEM LIST REVIEW**

Community Development Director Fluegel reported that the following three concepts were scheduled for an upcoming Council Work Session:

1. Short-term rentals – 4/1
2. Noise ordinance/outdoor entertainment – 4/15
3. Beach raking – 4/15

Chair Zuba questioned the status of the summer LPA agendas.

Zoning Coordinator Chapman asked if there was a month that the LPA would like to take off in the summer.

Discussion ensued regarding agenda items and the LPA meeting schedule.

Mr. Durrett suggested a workshop for the LPA to discuss things they would like to see happen in the Town.

Discussion was held concerning an LPA workshop and possible date/time to hold the workshop.

Zoning Coordinator Chapman noted there may not be any public hearings ready for the April meeting and she would forward an email to the LPA to inform them of the situation.

Discussion was held regarding using Code Enforcement to help clean-up neighborhoods; how after Hurricane Charley people cleaned their property; neighbors or community organizations helping

neighbors to clean-up properties; and legal issues when it comes to using government funds to clean-up problem properties.

Ms. Shamp questioned the Town Council's Agenda Management List for March 18<sup>th</sup> to discuss bridge alternatives.

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LPA Attorney Miller responded that it was her understanding that the topic had to do with some type of mid-point bridge.

**X. ITEMS FOR NEXT MONTH'S AGENDA**

None.

**XI. PUBLIC COMMENT**

Public Comment opened.

Bruce Butcher, resident, reported he attended a prior LPA meeting when the matter concerning cleaning up neighborhoods, the FEMA 50% Rule issues, and potential incentives were discussed. He suggested instead of incentives to remove disincentives and reviewed his suggestions as it related to the following:

- FEMA 50% Rule as it pertained to appraised value and the value of the remodel process
- Permitting – time consuming problems and the high cost of permits, and 'permit confusion'

Public Comment closed.

**XII. ADJOURNMENT**

**MOTION:** Motion by Mr. Kakatsch, seconded by Mr. Durrett to adjourn.

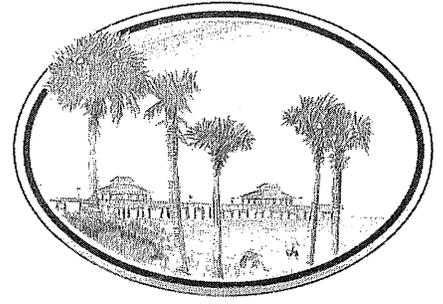
**VOTE:** Motion approved, 7-0.

Meeting adjourned at 11:00 a.m.

Adopted 4/9/13 **WITHOUT** changes.  
Motion by **Shamp**; Second by **Smith**  
Vote: **6-0**

  
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Signature

End of document.



# *Town of Fort Myers Beach*

## **Memorandum**

**To:** Mayor, Vice Mayor and Council Members  
**From:** Leslee Chapman, Zoning Coordinator  
**CC:** Terry Stewart, Town Manager  
Walter Fluegel, Community Development Director  
**Date:** April 25, 2013  
**Re:** VAR2011-0007, Moss Marine Sign Variance

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It is important to note that when a variance is requested by an applicant, the burden of proof is on that applicant and accordingly, it is the applicant's responsibility to provide an accurate description of the variance being requested, together with applicable area calculations and supporting justification.

The Moss Marine sign variance request, case VAR2011-0007, has proven to be the most complex and difficult request that Staff has encountered since the adoption and implementation of the revised sign ordinance (Ord. 11-01). This application was originally submitted on December 30, 2011 and Staff has worked diligently with the applicant in an attempt to assist them in producing a request and application that could result in a positive resolution to the sign compliance issues.

Unfortunately, Staff remains frustrated that after these many months of working with the applicant they still have not provided sufficient documentation or supporting rationale for the variance being requested. Staff was, therefore, left with little choice but to move the VAR2011-0007 through the public hearing process, because simply applying for a variance without adequate documentation should not allow the applicant to avoid compliance with the Town's sign ordinance regulations.

The original Staff Report was written in August of 2012 and the case had its first public hearing at the August 2012 LPA meeting. Through the LPA public hearing process, the applicant was granted three continuances by the LPA, in order to provide the applicant more time to develop a sufficient application. At the time of each of these continuances, the LPA and Staff gave the applicant sufficient direction on areas of inadequacy in the application, but each time, the applicant failed to provide adequate information.

At its March 2013 meeting, the LPA, voted to recommend that Town Council deny the request for *any* variance on the subject property due to lack of response by the applicant to the LPA's repeated requests for additional information and justification for the variance.

The materials attached directly to this memo were submitted by the applicant's sign contractor on March 28, 2013, following the March 2013 LPA meeting and as a response to some of the suggestions given by the LPA at that March meeting. These documents, however, were submitted without any clear indication of the magnitude of the variance being requested, and lacked any narrative statements in support of the variance request.

Staff, therefore, believes that the easiest way to analyze this resubmittal is to address each sign separately.

Sign 1 (see pages 3 & 4 and attached site plan)

The applicant indicates that Sign 1 is wall sign measuring at 49.5 square feet. They indicate they wish to keep this sign and update the copy.

Section 30-153(b)1 states that: *For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.*

Both Town Staff and the Town Attorney have been consistent throughout the sign implementation process that parcels with two or more business establishments cannot combine their signage. No one business may have more than 32 square feet of total sign area. Therefore the proposal by the applicant to combine the area and have one business, in this case The Big M, exceed the 32 square foot allowance is not permitted.

Staff cannot support this proposal.

Sign 2 (see pages 5 & 6 and attached site plan)

The applicant indicates that this sign is a wall sign currently 24 square feet. The applicant proposes to replace this sign with a new sign (same copy) at "14 square feet to max out the balance of the 64 square feet" of allowable sign area.

Staff cannot support this change as proposed by the applicant as it relies on an erroneous assumption that Moss Marine and The Big M can combine their individual 32 square feet, as explained for Sign 1 above.

Staff cannot support this proposal.

Signs 3, 4, 5 & 6 (see pages 7 -14 and attached site plan)

The applicant is categorizing these signs as 'Instructional' as per Section 30-6(8).

Section 30-6(8) states: *Instructional signs or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.*

Chapter 30 does not include a definition of Instructional sign, therefore Staff cannot determine whether Signs 3, 4, 5, and 6 are Instructional sign or not. However, even if they can be considered instructional, they do meet the requirement of not exceeding 4 square feet.

Since these signs contain either arrows or language that could be considered instructional, Staff can support the applicant's categorization of Signs 3, 4, 5, and 6 as Instructional signs. Therefore each sign should be exempt from the total calculation of sign area on the subject property.

Sign 7 (see pages 15 & 16 and attached site plan)

The applicant has categorized Sign 7 as an Interior sign and as such claims it is exempt, pursuant to Section 30-6(9), from the total sign area allowance.

Section 30-6(9) states: *Interior signs. Signs located within the interior of any building, or within the inner or outer lobby, court, or entrance of any theater. This does not, however, exempt such signs from the structural, electrical, or material specifications as set out in this code and the Florida building code.*

Staff cannot support the claim that Sign 7, previously identified by the applicant as approximately 311 square feet, is an interior sign. Staff feels that Section 30-6(9) is clearly intended to be used for interior way finding within a complex of buildings or a theater. To use the Interior sign exemption as a means to exempt almost 10 times the allowable sign area for a business is taking the exemption entirely out of context. Staff feels that Sign 7 has a clear, direct and very large commercial message as defined in Section 30-2 and is therefore required to comply with the maximum sign area provisions found in Section 30-153(b). Further, the sign can clearly be seen from adjacent right-of-way and is not, therefore, an interior sign.

Staff cannot support classifying Sign 7 as an Interior sign.

Signs 8, 9 & 10 (see pages 17 – 22 and attached site plan)

The applicant is claiming these three signs as Interior signs, and that they are exempt by virtue of Section 30-6(9) from the total sign area allowance.

As previously discussed, the Interior signs exemption is intended to be utilized for way finding *within* a building complex. It is not intended to be used to allow commercial message signs above and beyond the maximum allowance of 32 square feet.

Staff cannot support classifying Signs 8, 9 & 10 as Interior signs.

Sign 11 (see pages 23 & 24 and attached site plan)

The applicant has categorized Sign 11 as a Waterway sign and proposes that it should be exempt by virtue of Section 30-6(23) from the maximum sign area allowance.

Section 30-6(23) reads: *Waterway signs. Directional signs along inland waterways.*

Staff feels that the applicant's attempt to make Sign 11 an exempt waterway directional sign is contrary to the intent of the exemption for Waterway directional signs. Sign 11 has a very clear commercial message. Staff is of the opinion that Sign 11's main purpose is the commercial message and does not have any directional value.

Staff cannot support classifying Sign 11 as a Waterway sign.

Sign 12 (see pages 3 & 4 and attached site plan)

The applicant is categorizing Sign 12 as 'Instructional' as per Section 30-6(8).

Section 30-6(8) states: *Instructional signs or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.*

Chapter 30 does not include a definition of Instructional sign, therefore Staff cannot determine whether Sign 12 is an Instructional sign or not. However, it does meet the requirement of not exceeding 4 square feet.

Staff can support the applicant's categorization of Sign 12 as an Instructional sign because it does direct patrons on where to purchase cruise tickets. Therefore the sign should be exempt from the total calculation of sign area on the subject property.

Sign 13 (see pages 27 & 28 and attached site plan)

The applicant has categorized Sign 13 as both an Awning sign and as a Waterway sign and proposes that by virtue of Section 30-6(23) it is exempt from the total sign area requirements.

Section 30-6 (1) reads: *Awning signs. Awning signs consisting of one line of letters or building or address numbers on the hanging border, or an identification emblem, insignia, initial, or other feature not exceeding an area of eight (8) square feet painted or installed elsewhere on an awning.*

Section 30-6(23) reads: *Waterway signs. Directional signs along inland waterways.*

It is clear to Staff that Sign 13 does not qualify for exemption from the maximum area allowance provided by the Waterway sign exemption. However, Staff would be willing to consider classifying Sign 13 under the awning exemption if the applicant had provided Staff with the sign's square footage. Without the ability to confirm that it is 8 square feet or less in area, Staff cannot support this proposal.

Sign 14 (see pages 29 & 30 and attached site plan)

The applicant is claiming this sign as an Interior sign, and that they are exempt by virtue of Section 30-6(9) from the total sign area allowance.

As previously discussed, the Interior signs exemption is intended to be utilized for way finding within a building complex. It is not intended to be used to allow commercial message signs above and beyond the maximum allowance of 32 square feet.

However, this sign as appears to be located on an awning, and could possibly be exempt if the total area on all awnings on this structure (see Sign 13) contain only one line and are 8 square feet or less in area. The applicant, however, did not provide a square footage calculation, so Staff was unable to consider this option.

Staff therefore cannot support this proposal.

Sign 15 & 16 (see pages 31 & 32 and attached site plan)

The applicant is categorizing these signs as 'Instructional' as per Section 30-6(8).

Section 30-6(8) states: *Instructional signs or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.*

Chapter 30 does not include a definition of Instructional sign, therefore Staff cannot determine whether Signs 15 and 16 are Instructional sign or not. However, they do meet the requirement of not exceeding 4 square feet.

Staff can support the applicant's categorization of Signs 15 and 16 as Instructional signs because they are used to instruct non-employees that they are not to park in those spots. Therefore each sign should be exempt from the total calculation of sign area on the subject property.

Sign 17 (see pages 3 & 4 and attached site plan)

The applicant has categorized Sign 17 as a Waterway sign and proposes that it should be exempt by virtue of Section 30-6(23) from the maximum sign area allowance.

Section 30-6(23) reads: *Waterway signs. Directional signs along inland waterways.*

Staff feels that the applicant's attempt to make Sign 17 an exempt waterway directional sign is contrary to the intent of the exemption for Waterway directional signs. Sign 17 has a very clear commercial message. Staff is of the opinion that Sign 17's main purpose is the commercial message advertising Shell gasoline and does not have any directional value. There is no correlation between this commercial message and directional signage for an inland waterway. It appears that pages 44-46 are taken from the applicant's lease with Shell, however nowhere in the documents provided to Staff does Staff see a requirement from Shell that the sign must be of a specific size.

Staff does not support classifying Sign 17 as a Waterway sign.

Sign 18 (see pages 3 & 4 and attached site plan)

The applicant is categorizing Sign 18 as 'Instructional' as per Section 30-6(8).

Section 30-6(8) states: *Instructional signs or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.*

Chapter 30 does not include a definition of Instructional sign, therefore Staff cannot determine whether Sign 18 is an Instructional sign or not. Further, the applicant has not provided a square

footage measurement for Sign 18 so Staff can determine whether the signage meets the 4 square foot maximum area.

Based on the information provided, Staff cannot support the categorization of Sign 18 as an Instructional sign.

#### Page 37

The applicant has included four signs on page 37 that they have allegedly posted to meet insurance requirements. Page 42 includes a letter from Walter Thomas of Thomas & Company, whom Staff is assuming is the applicant's insurance provider. The language in this document is vague and does not supply specifics as to which signs Mr. Thomas claims are necessary for safety compliance.

However, Staff does recognize the insurance and safety values with these four signs and will support the signs indicated on page 37 as exempt by classification as either Instructional or warning signs.

#### ANALYSIS

The original Staff report, written in August of 2012, explained that there are two businesses located on the subject property, and each entitled to a total of 32 square feet of sign area. Final tabulation of total on-site signage at the time of application, as calculated by Staff, resulted in The Big M having 168.25± square feet of signage and Moss Marine with 311± square feet of signage. The request for a sign area variance is, therefore, extensive and would result in the applicant being able to retain a sizeable amount of signage with virtually no rationale or justification for the variance request.

Further, the resubmittal received by Staff on March 28, 2013 following the March 2013 LPA meeting, while including more information on specific signs (see previous sign by sign analysis), continues to lack any basis or justification for their variance request. Additionally, as has already been analyzed by Staff in the preceding pages, the categorization proposed by the applicant for signs 1, 2, 7, 8, 9, 10, 11, 13, 14 and 17 as exempt simply cannot be supported by staff.

#### Section 34-87

Since it has been over 10 months from the date of the original Staff report, Staff wanted to include an additional, and now revised, analysis using the five decision making factors described in LDC Section 34-87(3). Staff recommends the following findings and conclusions:

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The applicant has maintained that their 3± acre parcel and 46,200 square feet of building wall faces are the 'exceptional or extraordinary circumstances' inherent on the subject property that keeps them from conforming to the standards set forth in Chapter 30.

Staff does not find that a large parcel or a waterfront business is exceptional or extraordinary. Staff therefore recommends the finding that there **are not** exceptional or extraordinary

conditions or circumstances that are inherent and unique to the subject property and that it **does not** justify the variance.

- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

Staff was not able to find any permit records as to when the current and existing wall signs were installed, however the applicant maintains that the signs were in place prior to the adoption of the original sign ordinance in 1999.

Staff finds that the conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.

- c. *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The applicant has not provided a complete inventory and assessment of all signs, including their area, on the subject property which makes it difficult to assess the degree of variance actually being requested. There is no clear communication of what the existing sign area is, and what is proposed to remain and/or be exempt.

Therefore based on limited evidence as to the necessity of the request, Staff finds that the variance requested **is not** the minimum variance necessary to relieve an undue burden.

- d. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

It remains unclear as to what extent the applicant is requesting relief from total sign area requirements of Chapter 30 of the LDC. No totals of existing, proposed, and exempt were provided to Staff to analyze, nor was any narrative justification provided detailing how granting the variance would not injure the neighborhood or be detrimental to the public welfare.

It is Staff's opinion that there is not a justifiable reason or hardship that exists on the subject property, and the applicant has not provided any compelling evidence that would justify or permit the granting of any sign area variance by Town Council. Staff therefore finds that granting the variance **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including area and prohibited types) and has made a decision to enact and enforce a uniform sign code.

Staff finds that the circumstances of the specific piece of property on which a variance is sought are general in nature and therefore do not demonstrate a verifiable hardship.

#### Conclusion

After reviewing the submittal documents from the applicant, it is unclear what the applicant is requesting in the way of a variance. Due to the lack of response by the applicant upon repeated requests for more information, by both Staff and the LPA, Staff's only option is to move the application the public hearing process. The applicant has not provided a narrative summary explaining the relevance of the supporting documentation and has also failed to provide any justification for the variance request. While a site plan was included with the latest resubmittal from March 28, 2013, missing from those documents is a chart or table that depicts exactly how much sign area is requested to remain for each business on the subject property. Without this information, Staff cannot determine what the actual variance request is and if that it truly is the minimum variance necessary.

Therefore, Staff recommends that Town Council DENY VAR2011-0007 Moss Marine sign variance.

# *Moss Marine Signs*

*Fort Myers Beach Ordinance Compliance*

"Enclosed is a current status of signs showing  
required changes to current codes."

*submitted 3.28.13*

1



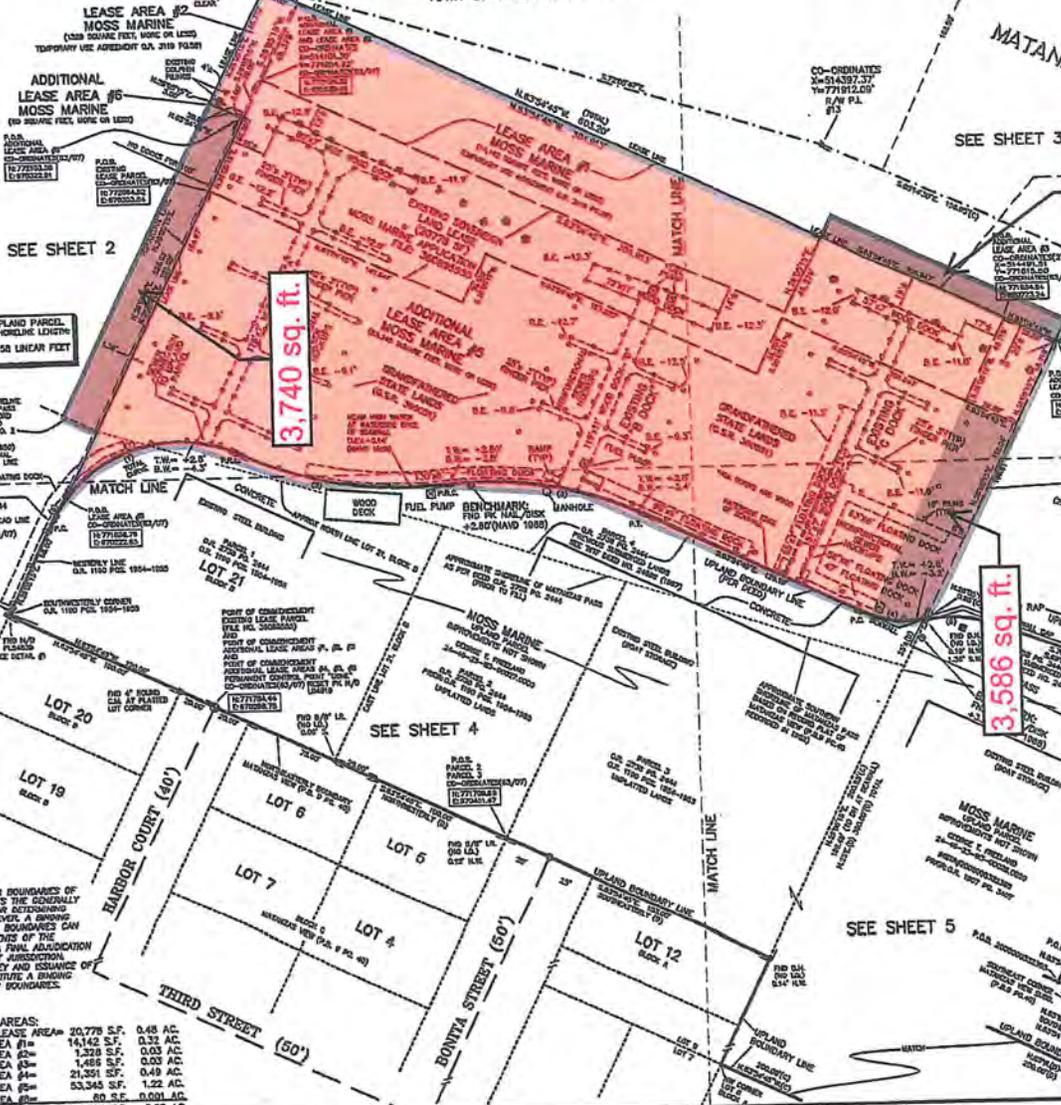
# SPECIFIC PURPOSE SURVEY FOR SUBMERGED LAND LEASE

OF  
A PARCEL OF SUBMERGED LAND  
LYING IN  
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,  
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

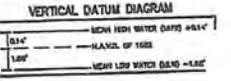
Curve number	Curve number 2	Curve number 3	Curve number 4	Curve number 5
Radius= 75.00 Delta= 50°30'00" Arc= 110.88 Tangent= 75.00 Chord= 100.00 Chord Brg. N.17°15'15"E	Radius= 200.00 Delta= 31°47'16" Arc= 110.88 Tangent= 35.95 Chord= 100.54 Chord Brg. N.72°40'23"W	Radius= 200.00 Delta= 31°47'16" Arc= 110.88 Tangent= 35.95 Chord= 100.54 Chord Brg. S.72°40'23"E	Radius= 50.00 Delta= 32°27'30" Arc= 33.25 Tangent= 17.14 Chord= 33.24 Chord Brg. N.43°03'30"E	Radius= 75.00 Delta= 12°54'00" Arc= 14.22 Tangent= 7.17 Chord= 14.22 Chord Brg. N.31°32'41"E

**NOTES:**  
SURVEY PREPARED FOR THE SPECIFIC PURPOSE OF A SUBMERGED LAND LEASE APPLICATION.  
SURVEY BASED ON THE PLAN OF MATANZAS PASS, RECORDED DEEDS AND FOUND MONUMENTS.  
BEARINGS BASED ON THE U.S. ARMY CORP. OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1933 WITH THE CENTERLINE OF THE CHANNEL AS BEARING N77°02'00"W.  
ELEVATIONS BASED ON M.A.S.L. OF 1988 AND U.S.C.G.S. BENCHMARK NO. 2 1905.  
IRON ROD "B" ARE 3/4" x 1/4" BEARER WITH YELLOW CAP NUMBER CORPORATION NO. 4918.  
UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.  
THIS PLAN PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OF ANY FEDERAL, STATE, FEDERAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.  
PARCELS SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN.  
STATE PLANE COORDINATES LABELED (S) ARE FLORIDA WEST 2011-1997 DATUM BASED ON THE U.S. ARMY CORP. OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1933. STATE PLANE COORDINATES LABELED (N/S) ARE BASED ON SURVEY-GRADE C.P.S. OBSERVATIONS BASED ON FLORIDA WEST 2011-1997 ADJUSTMENT HELDING CONTROLING POINT 8000.  
MEAN HIGHER HIGH WATER (MHHW) WAS ESTABLISHED FROM 1994 TO 1997 BY THE U.S. ARMY CORP. OF ENGINEERS. MHHW IS 0.00 FEET ABOVE MEAN SEA LEVEL (MSL).  
THE HIGHEST TIDE PART OF EACH LOT IS TO BE USED TO DETERMINE SURVEY MEASUREMENTS.  
DATE OF LAST SURVEY: 11/15/2009

Moss Marine, Inc. total preempted area (pink shaded area) = 96,572 sq. ft.



**SURVEY CONTROL BASIS:**  
FUBISH 18 2x=815254.00' Y=773523.00'  
FUBISH 24 2x=815059.11' Y=775584.00'  
U.S. ARMY CORP. OF ENGINEERS D.O. FILE NO. 27-3030 DATED APRIL 1933



**SHORELINE CONDITIONS:**  
10'-1000' NORTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.  
1750' S TOTAL LEASE AREA SHORELINE & DOCK.  
10'-1000' SOUTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.

- LEGEND**
- (P) = PLAT
  - (M) = MEASURED
  - (V) = FIELD MEASURED & VOUCHER
  - (D) = DEDD
  - (R) = RADIAL
  - (RD) = RADIAL
  - PC = POINT OF CURVE
  - PRC = POINT OF REVERSE CURVE
  - PIB = POINT OF BEGINNING
  - PE = POINT OF ENDING
  - PC = PLAT
  - C.M. = CONCRETE MONUMENT
  - LD = IDENTIFYING LABEL
  - D.H. = DRILL HOLE
  - LI = IRON ROD
  - FM = FOUND
  - U.E. = UTILITY EASEMENT
  - R/W = RIGHT-OF-WAY
  - C = CALCULATED
  - O/H = OVER HEAD LINES
  - N/D = NOT DETERMINED
  - M/L & D/R = MAIL & DISK
  - W = WIRE
  - W.M. = WIRE MONUMENT
  - U.T.S. = UNITED TELEPHONE SERVICE BOX
  - S.W. = SEWER MANHOLE
  - P = PLUMB
  - C.D. = CATCH BASIN
  - T.H. = TOP OF SEAWALL
  - B.W. = BOTTOM OF SEAWALL
  - S.F. = SQUARE FEET
  - L.F. = LINEAR FEET
  - P.V. = POINT OF BEGINNING
  - B.E. = BOTTOM ELEVATION

**PARCEL AREAS:**

EXISTING LEASE AREA #1	20,778 S.F.	0.48 AC.
LEASE AREA #1	14,142 S.F.	0.32 AC.
LEASE AREA #2	1,328 S.F.	0.03 AC.
LEASE AREA #3	1,465 S.F.	0.03 AC.
LEASE AREA #4	21,251 S.F.	0.49 AC.
LEASE AREA #5	53,345 S.F.	1.22 AC.
LEASE AREA #6	80 S.F.	0.001 AC.
<b>TOTAL AREA</b>	<b>112,490 S.F.</b>	<b>2.59 AC.</b>

**Bean, Whitaker, Lutz & Kareh, Inc.** (INC 01919)  
CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
10341 WOODCROFT BOULEVARD, FORT MYERS, FLORIDA 33905-2895 (889) 491-1331

**3303073.1.DWG**

DATE	PROJECT NO.	DESIGNED BY	SCALE	SHEET	FILE NO. (S-P-N)
7-28-11	30573	SCW	1" = 30'	1 OF 8	24-08-23

EXHIBIT A  
C.G.C. No. 10-2384-36-SL

2

The Big "M" Sign is 49.5 sqft. Will keep the same and update current copy. This is Part of the 64 sqft for the two companies.



Located on Strap# 00027.0000. This is at the end of Harbor CT right-of-way.

Sign# 1

Wall Sign



The Big M Sign Shown will be scaled down as the same copy to meet the other portion left of the 64 sqft which would be 14 sqft. This sign as of now is 24 sqft.

Sign #2



Wall Sign 14 sqft.



Located on Strap# 00027.0000 At the end of  
Bonita ST right-of-way.

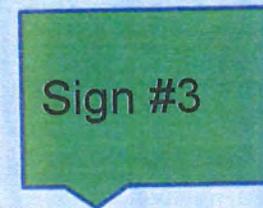


Sign  
#2

the big  
**M**

Wall Sign

Casino Directional Sign 3 sqft this sign is exempt as in sec 30-6 #8 "Instructional Sign"



Located on Strap#: 00027.0000

Sign  
#3

Instructional Sign



# Casino Directional Sign 3 sqft: Exempt as in sec 30-6 #8 "Instructional Sign"

TOWED AT OWNERS EXPENSE



Sign # 4

Instructional Sign

Located on Stap#: 00027.0000 On the end of Harbor CT right-Of-way.



Casino parking directional Sign: Is exempt under sec 30-6 #8 "Instructional Signs"

Instructional Sign



Sign# 5

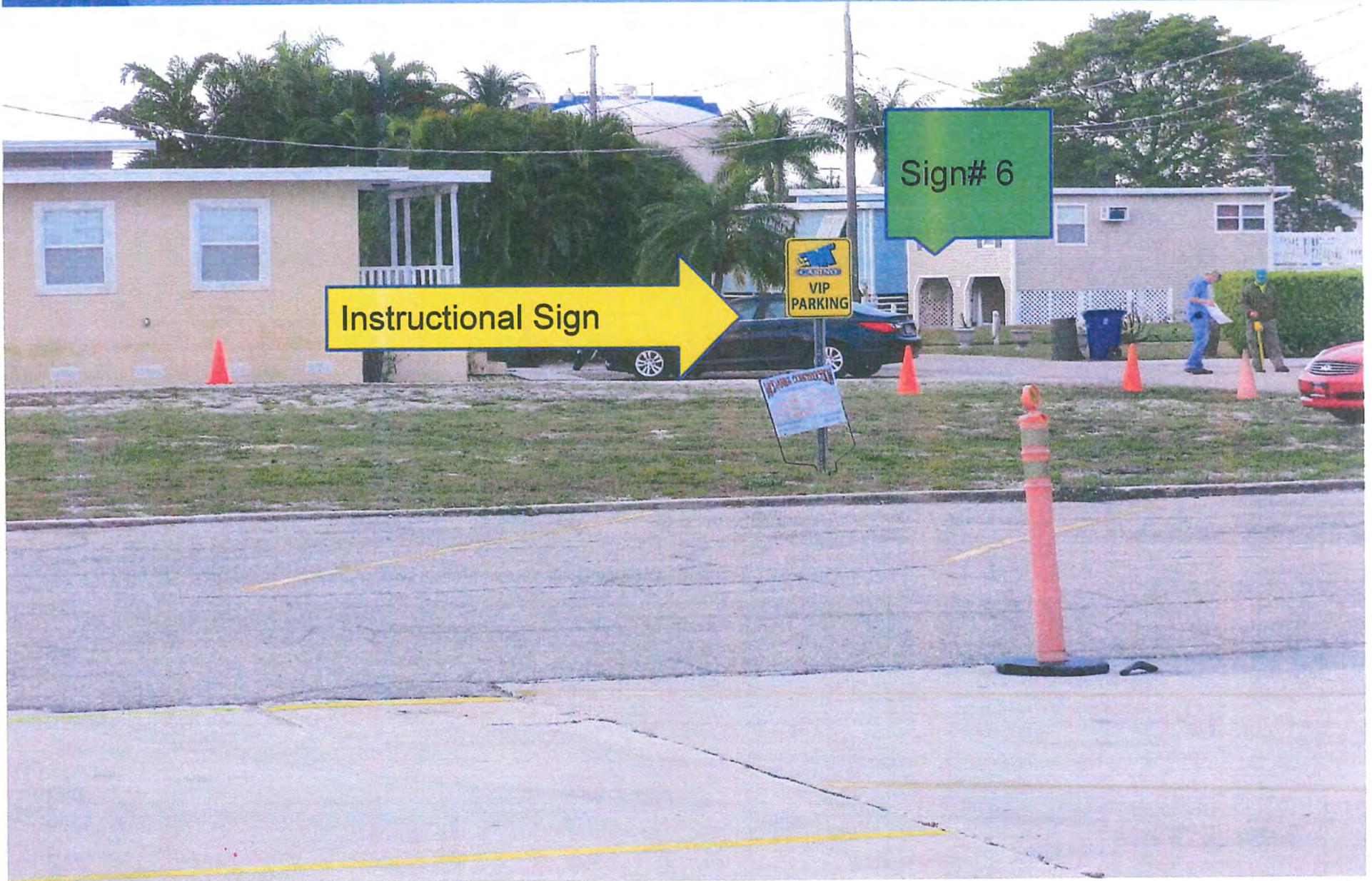
Located in Strap# 00026.0020



# VIP Parking Sign is Exempt under sec 30-6 #8 "Instructional Sign"



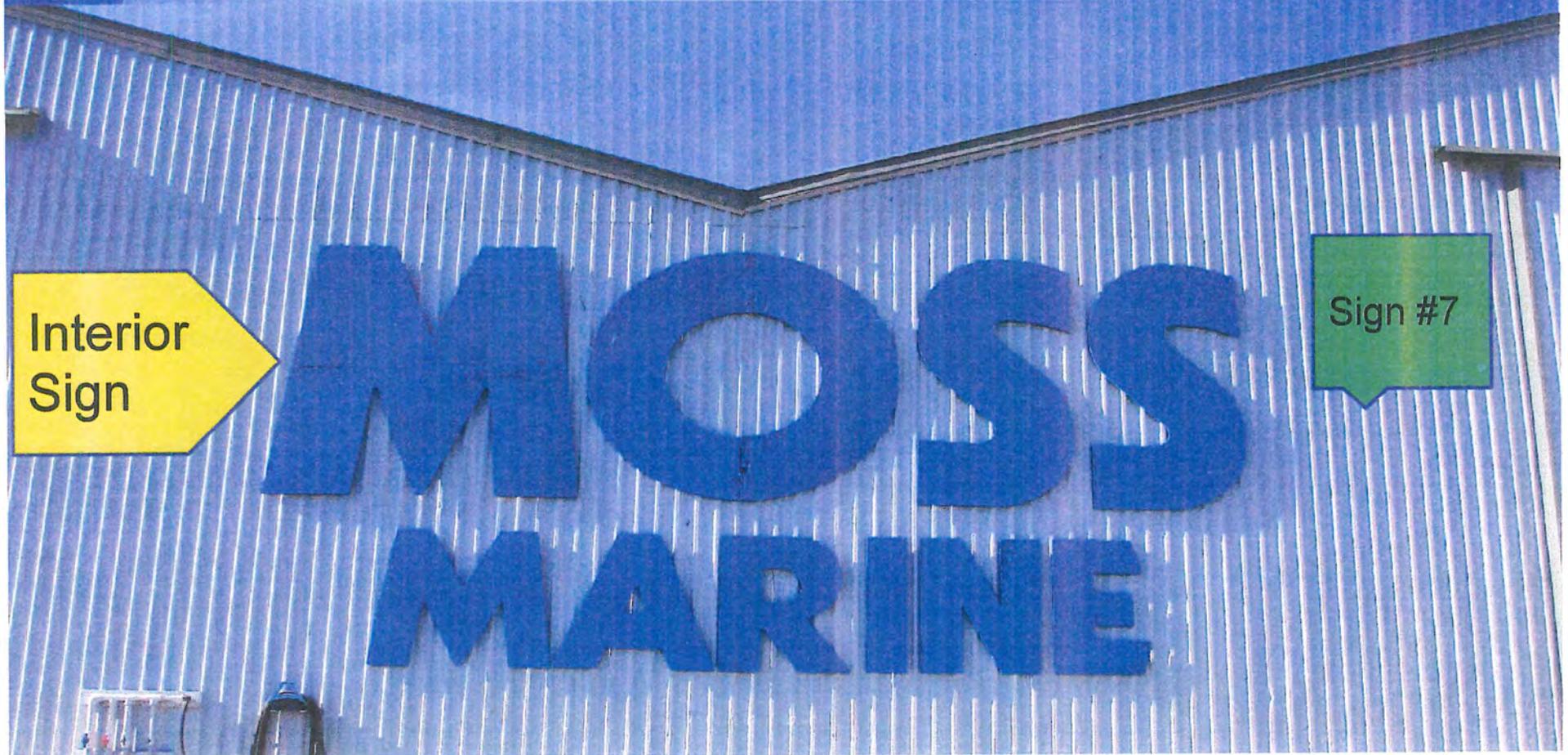
Located on Strap# 00027.0000



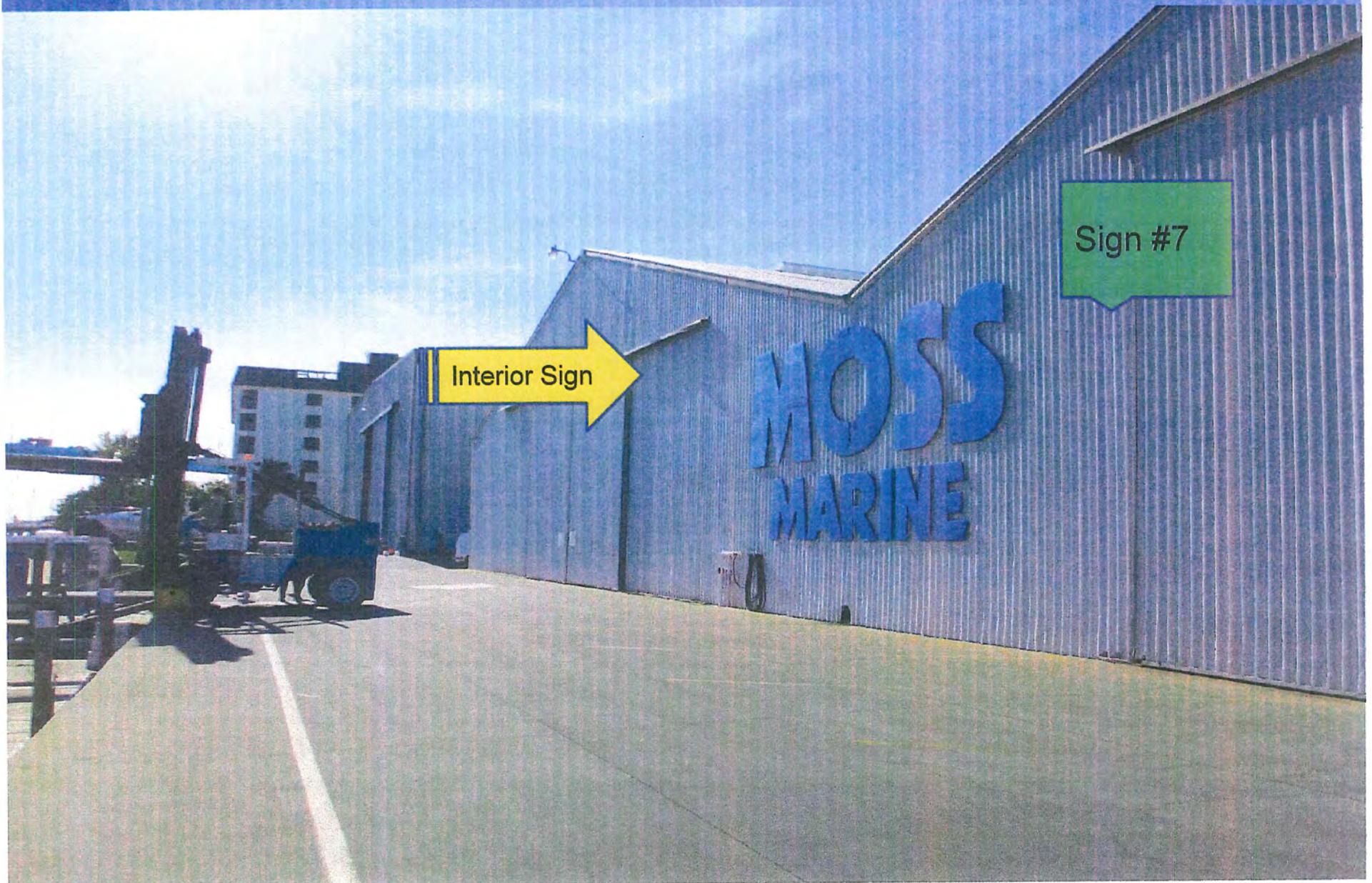
Instructional Sign

Sign# 6

Moss Marine Sign located on the interior court of the property And can't be seen from the right-of-way. This sign is exempt as in section 30-6 #9 in ordinance. "Interior Sign"



Located on Strap # 00027.0000



Ship Store sign located in the interior court of property and can't be seen from right-of-way. This sign is exempt as is sec 30-6 #9, "Interior Sign"





Moss Marine 765-play sign is located in the interior court and can't be seen from the right-of-way. This sign is exempt as in sec 30-6 #9 "Interior Sign"





Boaters Lounge sign is in the interior court and can't be seen from right-of-way. This sign is exempt as in sec 30-6 #9 "Interior Signs"





# Welcome Aboard Directional Sign: Exempt under sec 30-6 #23 "Waterway Sign"

Waterway Sign

Sign# 11

Welcome Aboard

the big M

CASINO

Located on the farthest North Dock Of Moss Marine, Owned by the State.



Directional Sign Cruise Tickets inside 1.5 sqft, Exempt under sec 30-6 #8 "Instructional Sign"

Sign# 12



**CRUISE  
TICKETS**  
**INSIDE**



Instructional Sign

Located On Strap# 00027.0000



# Big "M" Boarding Directional: Exempt under sec 30-6 #1, #23. "Awning Sign" and "Waterway Sign"





Water Way Sign

Sign#  
13

Thank You for Sailing With Us! Sign.  
Exempt under sec 30-6 #9 "Interior Sign"

Sign#  
14



Located on the dock at Moss Marine owned by the State.



2 Big M Casino Employee Parking Signs 3 sqft each. Exempt as in sec 30-6 #8 "Instructional Sign"



Located on Strap# 00026.0020



# Shell Gas Sign: Exempt under sec 30-6 # 22 "Water Way Sign"



Water Way Sign

Sign#  
17

SMALL  
GAS  
BOATS

# On the Dock at the Moss Marine Owned by the State.



Sign#  
17

Water Way Sign

# The Big "M" Casino Parking Sign: Is exempt under sec 30-6 #8 "Instructional Sign"

NO TRESPASSING  
BOATERS & GUESTS  
ONLY  
VIOLATORS WILL BE  
TOWED AT OWNERS EXPENSE



Sign# 18

Instructional Sign



Located on Strap# 00027.0000 At the end of  
Bonita ST right-of-way.



These signs are for insurance purposes for Moss Marine. Located between the two buildings on strap# 00026.0020



## **Moss Marine**

To: Town of Fort Myers Beach

Attached to the document Moss Marine is a copy and survey of the submerged lease from the state of Florida, Owned by State of Florida. The land in lease number BOT# 3608955555 does not belong to the Town of Fort Myers Beach. These surveys are for signs # 11, 13, 14 and 17. If there is an issue with their exemption in the format provided by Moss Marine.

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 RECEIPTS SECTION  
 POST OFFICE BOX 3070  
 TALLAHASSEE, FL 32315-3070



INVOICE

**Bill To:**

GEORGE FREELAND  
 450 HARBOR COURT  
 FT. MYERS BEACH, FL 33931

**\*\* INVOICE / INSTRUMENT INFORMATION \*\***

Invoice #: 65693  
 Invoice Date: 08/20/2012  
 Due Date: 09/19/2012  
 Rate: BASE RATE  
 Location: MOSS MARINE

Instrument #: 360895555  
 Expiration Date: 10/24/1999  
 Surcharge: NO SURCHARGE

**\*\* IMPORTANT REMINDERS \*\***

If paying by mail, please return invoice with your payment to the above address.  
 Online payment by check, credit card or debit card is available at  
<http://www.fdeportal.com/go/pay-invoices/>.

Late payments are subject to a 12% Interest fee pursuant to FAC 18-21.011(1)(b)11.

INFORMATION			ANNUAL LEASE FEE DATA					
Description	Memo	Object	Square Feet	Rate	Discount	Surcharge	*Amount	
ARREARS	FROM 10/24/08 TO 10/24/13 ON 24,342 SQ.FT.	021017	70,788	0	30%	N	\$18,624.24	
SUBMERGED LAND INTEREST ON ARREARS CALCULATION		005012	70,788	0	N/A	N	\$612.49	
25% INITIAL SURCHARGE	ON 24,342 SQ.FT.	021017	70,788	0	N/A	N	\$885.77	
ARREARS	FROM 10/24/10 TO 10/24/13 ON 1,452 SQ.FT.	021017	70,788	0	30%	N	\$682.58	
SUBMERGED LAND INTEREST ON ARREARS CALCULATION		005012	70,788	0	N/A	N	\$6.12	
25% INITIAL SURCHARGE	ON 1,452 SQ.FT.	021017	70,788	0	N/A	N	\$55.64	
Note: AGENT: D. MOLLER. SDR							<b>Subtotal</b>	\$20,866.84
							<b>Sales Tax (0.0%)</b>	\$0.00
							<b>County Tax (0%)</b>	\$0.00
							<b>Total</b>	\$20,866.84
							<b>Invoice Balance Due</b>	\$20,866.84
							<b>Instrument/Lease Balance Due</b>	\$20,866.84

\*ANNUAL LEASE FEE FORMULA = [(Square Feet \* Rate) - Discount] + Surcharge

For any questions concerning this invoice, please call the Division of State Lands at (850)245-2720

EXHIBIT B  
 OGC No. 10-2384-36-SL

52

# SPECIFIC PURPOSE SURVEY FOR SUBMERGED LAND LEASE OF A PARCEL OF SUBMERGED LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

**NOTES:**  
SURVEY PREPARED FOR THE SPECIFIC PURPOSE OF A SUBMERGED LAND LEASE APPLICATION.

SURVEY BASED ON THE PLAT OF MATANZAS PASS, RECORDS 12338 AND FOUR MODIFICATIONS.

BOUNDARIES BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1953 WITH THE COORDINATE OF THE CHANNEL AS SHOWN THEREON.

ELEVATIONS BASED ON NAVD83 OF 1988 AND M.D.B.S.S. MONUMENT IN U.S. 1988.

IRON RODS "EY" ARE 5/8" x 18" REBAR WITH YELLOW CAP BEARING MONUMENT NO. 4915.

UNDISCOVERED IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO INDICATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

PARTIAL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY DISCOVERED AND UNDISCOVERED, WRITTEN AND UNWRITTEN.

STATE PLAIN COORDINATES LABELED (27) ARE FLORIDA BEST STATE-11827 DATUM BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1953 AND COORDINATES LABELED (23/27) ARE BASED ON NORTH-GRACE PLAIN COORDINATES BASED ON FLORIDA BEST STATE-11827 DATUM.

THE MEAN HIGH TIDE ESTABLISHED MAY 1983 AT 672-3385 PER O.C. 20, 2011.

THE PROPERTY PART OF SAID LOT IS BY RIGHT OF EASE TO BE FILED.

SURVEY MADE BY 758 LINEAR FEET

DATE OF LAST PLAT

APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE

APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE

APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE

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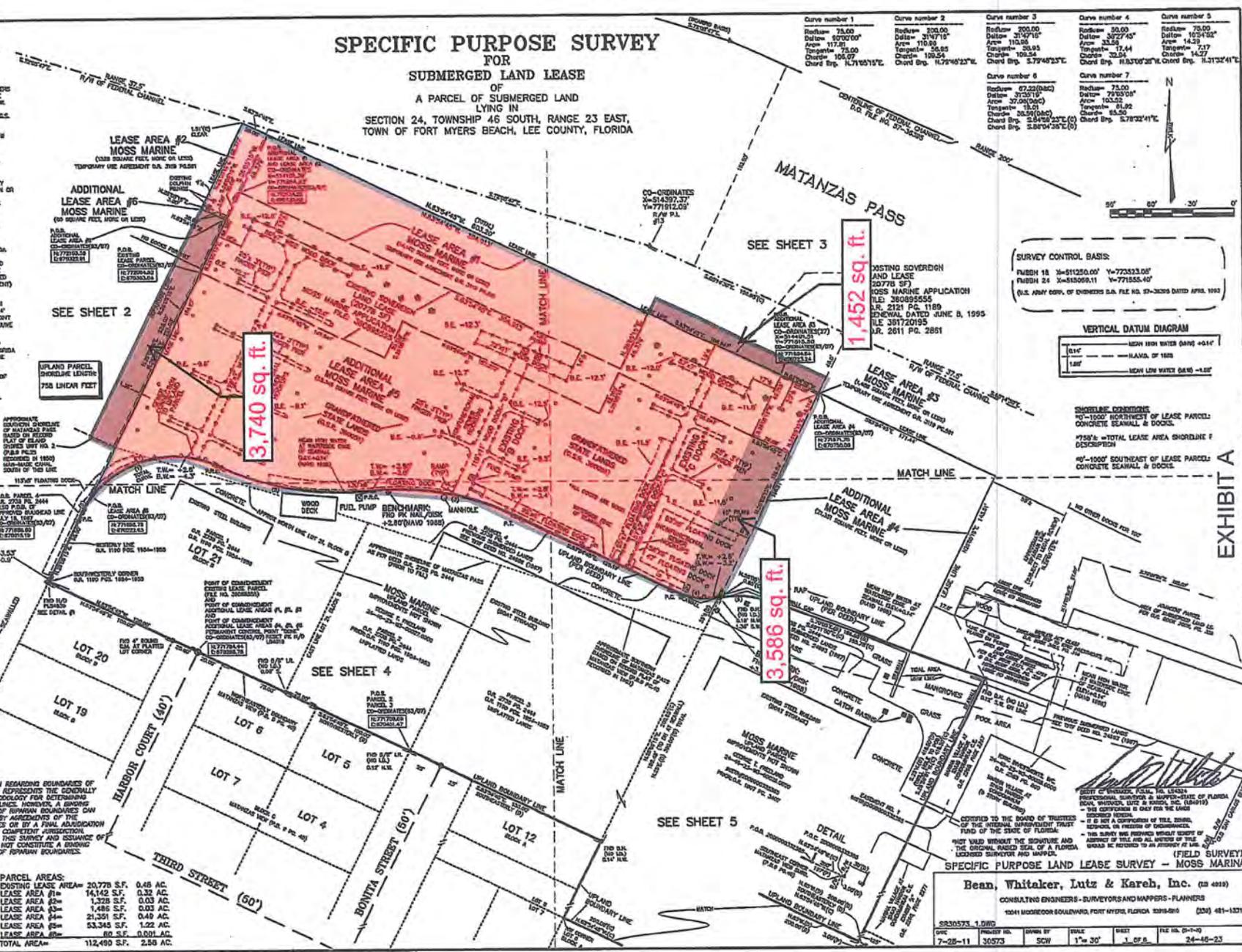
APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE

APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE

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APPROXIMATE SHORELINE DETERMINED BASED ON RECORD PLAT OF SUBMERGED LAND LEASE NO. 2 (1977) (RECORDED IN 1980) SOUTH OF THIS LINE



Curve number 1	Curve number 2	Curve number 3	Curve number 4	Curve number 5
Radius= 75.00'	Radius= 200.00'	Radius= 200.00'	Radius= 50.00'	Radius= 75.00'
Delta= 97.000°	Delta= 31.471°	Delta= 31.471°	Delta= 32.774°	Delta= 103.452°
Area= 117.21	Area= 119.80	Area= 119.80	Area= 33.22	Area= 14.21
Tangent= 75.00'	Tangent= 55.85	Tangent= 55.85	Tangent= 71.44	Tangent= 7.17
Chord= 150.00'	Chord= 135.54	Chord= 135.54	Chord= 33.54	Chord= 14.77
Chord Btg. 11.716151°E	Chord Btg. 11.794823°E	Chord Btg. 11.794823°E	Chord Btg. 5.774823°E	Chord Btg. 11.313241°E

**SURVEY CONTROL BASIS:**  
 FUBSH 18 X=511250.00' Y=773233.05'  
 FUBSH 24 X=515509.11 Y=771555.40'  
 (U.S. ARMY CORP. OF ENGINEERS S.A. FILE NO. 27-3283 DATED APRIL 1953)

**VERTICAL DATUM DIAGRAM**

MEAN HIGH WATER (MHW) +0.1'  
 M.S.L. 0.0'  
 MEAN LOW WATER (MLW) -0.1'

**SHORELINE CONDITIONS**  
 10'-100' NORTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.  
 750'± TOTAL LEASE AREA SHORELINE DESCRIPTION  
 10'-100' SOUTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.

Moss Marine, Inc. total preempted area (pink shaded area) = 96,572 sq. ft.

3,740 sq. ft.

1,452 sq. ft.

3,586 sq. ft.

- LEGEND**
- (F) = FLAT
  - (M) = MEASURED
  - (V) = FIELD MEASURED & VERIFIED
  - (D) = DEED
  - (R) = RADIAL
  - (N) = NON RADIAL
  - PC = POINT CURVE
  - PT = POINT OF TANGENCY
  - PRC = POINT OF REVERSE CURVE
  - PR = POINT
  - P.B. = PLAT BOOK
  - P.M. = PLAT
  - C.M. = CONCRETE MONUMENT
  - I.D. = IDENTIFICATION
  - D.H. = DRILL HOLE
  - I.R. = IRON ROD
  - F.N.D. = FOUND
  - U.C. = UTILITY EASEMENT
  - S.C. = SOUTH-COAST
  - (C) = CALCULATED
  - (O/H) = OVER MEAN LINES
  - M/D = H.W. & D.W.K.
  - M/M = METER METER
  - (H) = FIRE HYDRANT
  - (U) = UNITED TELEPHONE SERVICE BOX
  - (S) = SEWER MANHOLE
  - (E) = EASEMENT
  - (C.B.) = CATCH BASIN
  - T.M. = TOP OF SEAWALL
  - B.W. = BOTTOM OF SEAWALL
  - S.F. = SQUARE FEET
  - L.F. = LINEAR FEET
  - P.O.B. = POINT OF BEGINNING
  - B.E. = BOTTOM ELEVATION
- SPECIAL NOTE:**  
 THE INFORMATION REGARDING BOUNDARIES OF SUBMERGED LANDS REPRESENTS THE CURRENTLY ACCEPTED METHODOLOGY FOR DETERMINING SUCH BOUNDARIES. HOWEVER, A SURVEY DETERMINATION OF BOUNDARIES CAN ONLY BE MADE BY AGREEMENTS OF THE ATTACHED PARTIES OR BY A FINAL JUDICIAL DECISION OF A COURT OF COMPETENT JURISDICTION. ACCEPTANCE OF THIS SURVEY AND EASEMENT OF A PERMIT DOES NOT CONSTITUTE A BINDING DETERMINATION OF BOUNDARIES.
- PARCEL AREAS:**  
 EXISTING LEASE AREA= 20,778 S.F. 0.48 AC.  
 LEASE AREA #1= 14,142 S.F. 0.32 AC.  
 LEASE AREA #2= 1,328 S.F. 0.03 AC.  
 LEASE AREA #3= 1,485 S.F. 0.03 AC.  
 LEASE AREA #4= 21,351 S.F. 0.49 AC.  
 LEASE AREA #5= 53,345 S.F. 1.22 AC.  
 LEASE AREA #6= 80 S.F. 0.001 AC.  
 TOTAL AREA= 112,459 S.F. 2.58 AC.

**Bean, Whitaker, Lutz & Kereh, Inc.** (28 4918)  
 CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
 12011 INDEPENDENCE BOULEVARD, FORT MYERS, FLORIDA 33904-2810 (239) 481-1211

SR30573 1.010  
 DATE: 7-28-11  
 DRAWN BY: SCW  
 SCALE: 1"= 30'  
 SHEET: 1 OF 6  
 FILE NO.: D-1-10  
 DATE: 24-16-23

EXHIBIT A  
 OGC No. 10-2384-36-SL

40

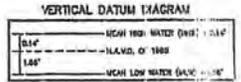
# SPECIFIC PURPOSE SURVEY FOR SUBMERGED LAND LEASE

OF  
A PARCEL OF SUBMERGED LAND  
LYING IN  
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,  
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

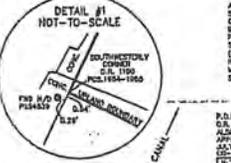
**NOTES:**  
SURVEY PREPARED FOR THE SPECIFIC PURPOSE OF A SUBMERGED LAND LEASE APPLICATION.  
SURVEY BASED ON THE PLAT OF MATANZAS PASS, RECORDED DEEDS AND FOUND MONUMENTATION.  
BEARINGS BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL, 1933 WITH THE CENTERLINE OF THE CHANNEL AS BEARING N72°20'47"E.  
ELEVATIONS BASED ON M.A.S.D. OF 1988 AND U.S.C.G.S. BENCHMARK NO. 2 1983.  
IRON RODS "TET" ARE 3/8" X 18" REBAR WITH YELLOW CAP BEARING CORPORATION NO. 4993.  
UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.  
THIS PLAT PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OF JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.  
PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (UNRECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).  
STATE PLANE COORDINATES LABELED (73) ARE FLORIDA WEST 1983-1983 DATUM BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL, 1933 AND COORDINATES LABELED (83/87) ARE BASED ON SURVEY-GRACE G.P.S. COORDINATES BASED ON FLORIDA WEST ZONE (N.A.D. 1983/2007 ADJUSTMENT) HOLDING CONTROL POINT 3-06-44-22 OPS 9060.  
THE MEAN HIGH WATER ELEVATION AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION (0.14' HAWK 1840) AT MEAN HIGH WATER INTERPOLATION POINT 872-5383 PER DEP PROCEDURAL APPROVAL DATED JUNE 29, 2011.  
THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.  
SURVEY MEETS OR EXCEEDS ACCURACY STANDARDS OF 1:10,000.  
DATE OF LAST FIELD WORK: 7-20-11 (SURVEY DATE).

Curve number 1	Curve number 2	Curve number 3	Curve number 4	Curve number 5
Radius= 75.00 Delta= 80°00'00" Arc= 117.81 Tangent= 35.00 Chord= 100.00 Chord Brg. N.71°20'15"E.	Radius= 200.00 Delta= 31°47'18" Arc= 110.90 Tangent= 58.85 Chord= 109.54 Chord Brg. N.77°48'23"E.	Radius= 200.00 Delta= 31°47'18" Arc= 110.90 Tangent= 58.85 Chord= 109.54 Chord Brg. S.77°48'23"E.	Radius= 50.00 Delta= 33°27'45" Arc= 14.52 Tangent= 12.44 Chord= 32.94 Chord Brg. N.83°36'36"W. Chord Brg. N.131°12'11"E.	Radius= 1.00 Delta= 114°52' Arc= 1.21 Tangent= 0.37 Chord= 0.37 Chord Brg. N.83°36'36"W. Chord Brg. N.131°12'11"E.

**SURVEY CONTROL BASIS:**  
FMBH 18 X=511250.00' Y=773533.00'  
FMBH 24 X=510550.81' Y=771955.49'  
(ALL ARMY CORP. OF ENGINEERS D.G. FILE NO. 87-6388 DATED: 1914, 1942)



**BOUNDARY CONDITIONS:**  
10'-1000' NORTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.  
728.8' TOTAL LEASE AREA SHOWN HEREON.  
10'-1000' SOUTHEAST OF LEASE PARCEL: CONCRETE SEAWALL & DOCK.



- LEGEND**
- (P) = PLAT
  - (M) = MEASURED
  - (V) = FIELD MEASURED & VERIFIED
  - (D) = DEED
  - (R) = RADIAL
  - (NR) = NON RADIAL
  - PC = POINT OF CURVE
  - PT = POINT OF TANGENCY
  - PRC = POINT OF REVERSE CURVE
  - PIV = POINT OF INTERSECTION
  - PIB = POINT OF BEGINNING
  - PO = POINT
  - C.M. = CONCRETE MONUMENT
  - LD = IDENTIFICATION
  - D.H. = DRILL HOLE
  - LR = IRON ROD
  - FINO = FOUND
  - U.Z. = UTILITY CASING
  - R.W. = RIGHT-OF-WAY
  - (C) = CALCULATED
  - O.V.H. = OVER HEAD LINES
  - H.W.D. = HAIL & DIRT
  - W.M. = WATER METER
  - F.I. = FIRE HYDRANT
  - U.S. = UNITED TELEPHONE SERVICE BOX
  - S. = SEWER MANHOLE
  - C.B. = CATCH BASIN
  - T.W. = TOP OF SEAWALL
  - B.O. = BOTTOM OF SEAWALL
  - S.F. = SURFACE FEET
  - U.F. = UNDER FEET
  - H.W. = POINT OF BEGINNING
  - B.E. = BOTTOM ELEVATION

**PARCEL AREAS:**

EXISTING LEASE AREA #1	20,778 S.F.	0.48 AC.
LEASE AREA #1	14,142 S.F.	0.32 AC.
LEASE AREA #2	1,328 S.F.	0.03 AC.
LEASE AREA #3	1,498 S.F.	0.03 AC.
LEASE AREA #4	21,351 S.F.	0.49 AC.
LEASE AREA #5	53,315 S.F.	1.22 AC.
LEASE AREA #6	50 S.F.	0.001 AC.
TOTAL AREAS	112,412 S.F.	2.58 AC.

BEAN, WHITAKER, LUTS & KRECH, P.A.  
CONSULTING ENGINEERS, SURVEYORS AND MAPPERS  
1400 UNIVERSITY BLVD., SUITE 1000, FORT MYERS, FLORIDA 33901-1000  
TEL: 888-288-2888 FAX: 888-288-2889  
WWW.BWLK.COM

**BEAN, WHITAKER, LUTS & KRECH, P.A.**  
CERTIFIED TO THE BOARD OF TRUSTEES OF THE FEDERAL INTERMEDIATE TRUST FUND OF THE STATE OF FLORIDA.  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL BASED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

**SPECIFIC PURPOSE LAND LEASE SURVEY - M**

DATE: 7-20-11  
SHEET NO: 34573  
SCALE: 1"=100'

(41)

THOMAS & COMPANY  
MARINASURE®  
P.O. BOX 60252  
FT. MYERS BEACH, FL 33906  
(239) 931-7171 Fax (239) 931-7176

To Whom it May Concern:

Please be advised that the signage in question at Moss Marine concerns safety issues and is at the recommendation of the Safety Engineers employed or contracted with the Insurance companies which specialize in insuring Marina.

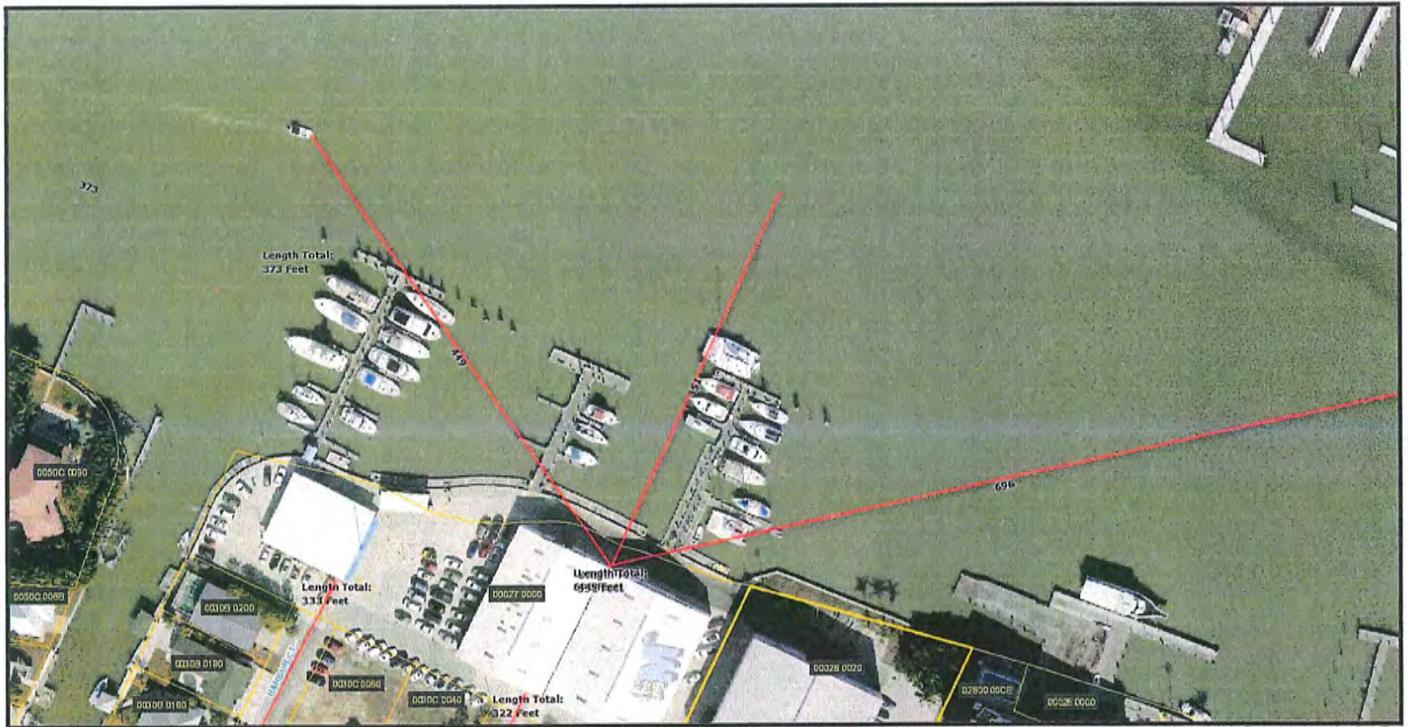
Much of this signage address safety issues as put forth by OSHA, EPA and DNR and are a mandate by them.

Should you require any further assistance, please to not hesitate to contact me.

Sincerely,

Walter W. Thomas  
Pres. Thomas & Company

# Lee Property Appraiser GeoView Map



Map printed: 2/24/2013 9:47 PM



Disclaimer: Maps and documents made available to public by the Lee County Property Appraiser's office are not legally recorded maps or surveys and therefore are not intended to be used as such. The maps and documents are created as part of a Geographic Information System (GIS) that compiles records, information and data from various departments, cities, county, state and federal sources. The source data may contain errors. Users are encouraged to examine the documentation or metadata associated with the data on which the map is based for information related to its accuracy, currentness, and limitations.

## Aerial Imagery

2012 Hi-Res (1/2 foot)

## Parcels and Streets

-  Parcel Lines
-  Street Centerlines
-  Delinquent Tax Parcels

## **RETAILER PRODUCT SALES AGREEMENT (Shell Brand)**

THIS AGREEMENT is between Moss Marine, Inc. (buyer) whose address is 450 Harbor Ct Fort Myers Beach Fl 33931 and Edison Oil Company (seller) whose address is 6940 Mission Lane Fort Myers Fl 33916

**DEFINITIONS.** As used in this Agreement, the terms below have the following meanings, whether singular or plural:

- (a) "Business Entity" - Any legal entity that is not an individual or sole proprietorship, including, without limitation, a partnership, corporation, limited liability company, limited liability partnership, or association.
- (b) "Buyer's Marketing Premises" - Buyer's premises, including, but not limited to, Buyer's office and storage, and distribution facilities that Buyer uses in connection with the Products.
- (c) "Buyer's Outlets" - Those retail outlets, including marinas and truck stops, operated or supplied by Buyer and which Seller has authorized Buyer to display the Identifications in connection with the resale of the Products to consumers.
- (d) "Identifications" - The trademarks, trade dress, service marks, and color schemes relating to the Shell brand licensed to Buyer by Seller under the terms of this Agreement for use by Buyer and Buyer's Outlets in connection with the marketing and sale of the Products.
- (e) "Law" - Any applicable statute, constitution, ordinance, regulation, rule, administrative order, or other requirement of any federal, state, or local government agency or authority in effect at the time of execution, or during the term, of this Agreement.
- (f) "Plant" - The distributing plant from which deliveries of Petroleum Products are made to Buyer.
- (g) "PMPA" - The Petroleum Marketing Practices Act as may be amended from time to time (15 U.S.C. §2801 et seq.).
- (h) "Products" - The gasoline and diesel fuel sold to Buyer by Seller for resale under the Identifications.

### **2. PURCHASE AND SALE OF PRODUCTS.**

(a) Subject to Articles 18 and 19, Seller shall sell and deliver to Buyer, and Buyer shall purchase and accept from Seller, the minimum quantities of Products identified in Exhibit A during each month and year during the term of this Agreement ("Minimum Quantities"). Buyer acknowledges that the Minimum Quantities are necessary and reasonable for, among other reasons, Seller to plan its supply operations and, as such, are of material and reasonable significance to the franchise relationship. Buyer also acknowledges that Seller has established minimum volume levels for gasoline ("Base Volume") to be resold through Buyer's Outlets for its customers in order to retain a Wholesale Marketer Agreement. Accordingly, in no event may Buyer's Minimum Quantities be less than the following Base Volume:

If the Minimum Quantities are less than the minimum Base Volume, the Minimum Quantities are deemed amended to be the same as the minimum Base Volume; and the Maximum Quantities will be proportionately increased. If Buyer fails to purchase this minimum Base Volume, Seller may take such action as Seller deems appropriate, including, without limitation, terminating or not renewing this Agreement.

- (b) Seller may, but will not be obligated to, sell Buyer more than the "Maximum Quantities" identified in Exhibit A. Seller's exercise of its right to do so will not obligate Seller to continue to sell Buyer such excess quantities.
- (c) To the extent practicable, Buyer shall take delivery of all Products on a ratable basis.
- (d) If Buyer fails to purchase and accept the Minimum Quantities in any 12-month period, Seller may unilaterally downward adjust the Minimum/Maximum Quantities each succeeding 12-month period by the difference between the annual Minimum Quantities and the amount actually purchased for that 12-month period. In addition, Buyer may request that Seller downward adjust Buyer's Minimum/Maximum Quantities if the need for the downward adjustment is due to a reason beyond Buyer's reasonable control. If Seller agrees that the reason is beyond Buyer's reasonable control, Seller shall downward adjust the Minimum/Maximum Quantities each succeeding 12-month period by the difference between the annual Minimum Quantities and the amount actually purchased for that 12-month period. Likewise, if Buyer purchases more than the Minimum Quantities, Buyer may request that Seller upward adjust Buyer's Minimum/Maximum Quantities. If Seller agrees, the Minimum/Maximum Quantities will be upward adjusted for each succeeding 12-month period.
- (e) If the term of this Agreement commences at any time after January 1st of any year during the term of this Agreement, Buyer must purchase and accept the Minimum Quantities during the remaining months of that 12-month period, but Seller's rights and remedies set forth in Articles 2(a) and (d) above will not commence until the next full 12-month period.
- (f) If Buyer terminates this Agreement prior to the expiration of its term or if Seller terminates this Agreement for cause in accordance with the PMPA or applicable Law, Seller will be entitled to all remedies available at Law or in equity. Notwithstanding the foregoing, if Buyer terminates this Agreement and Buyer's Outlets remain branded under the Identifications, Seller may waive its remedies pursuant to this article.

### **3. PRICES AND TERMS OF PAYMENT.**

- (a) **PRICES:** For Gasoline and Diesel Fuel: Seller's price to retailer in effect at time of delivery.
- (b) **TERMS OF PAYMENT:** Gasoline and Diesel Fuel terms are net seven days EFT subject to credit approval.
- (c) Seller may charge Buyer interest, at a reasonable lawful rate per annum, on all overdue sums owed to Seller. Further, if Buyer fails to make timely payment of any amount due Seller, in addition to all other rights or remedies available, Seller may take such action as Seller deems reasonable under the circumstances. Without limiting the generality of the foregoing, Seller may setoff or equitably recoup against any amount then due Buyer, defer further deliveries of the Products until payment of all outstanding indebtedness is made, and demand advance cash payment for further deliveries. Buyer shall comply with the terms

of any commercially acceptable reclamation notice issued to Buyer by Seller under applicable Law.

**4. TERM.** The term of this Agreement is ten years subject to the Seller's right to terminate or not renew this Agreement in accordance with applicable law. Upon expiration, this Agreement will continue on a month-to-month basis until the parties execute a new agreement or Seller terminates or does not renew this Agreement in accordance with applicable law. The term begins on the date of the first delivery of Shell gasoline.

## **5. PERMISSION TO USE THE IDENTIFICATIONS**

(a) Seller grants to Buyer permission to use the Identifications only in connection with the resale of the Products and so long as Buyer complies with the terms of this Agreement. Buyer acknowledges that the Identifications are a valuable and important property right and are essential to the goodwill and reputation of the Products. Buyer further acknowledges Seller's interest in the Identifications and Buyer shall not claim any right to or title or interest thereto.

(b) Buyer must obtain Seller's prior written authorization to use and display, or permit the use and display of, the Identifications at any retail outlet.

(c) Buyer shall follow all rules, regulations, standards, and guidelines Seller establishes from time to time relating to the use and display of the Identifications in connection with the resale of the Products.

**6. PRODUCT STEWARDSHIP AND QUALITY.** Pursuant to Seller's permission to grant Buyer use of the Identifications, Buyer shall comply with the following requirements relating to the marketing, storage, and resale of the Products.

(a) Buyer shall not resell, nor may any operator of Buyer's Outlets resell, gasoline at Buyer's Outlets other than the gasoline purchased by Buyer from Seller to be resold under the Identifications pursuant to the terms of this Agreement.

(b) The quality of the Products must be strictly maintained and not adulterated, commingled, or blended with any other products or substances in any manner.

(c) All Products must be clearly identified, correctly labeled, and resold under their proper Identifications and grades.

(d) All signs and other advertising devices or materials furnished by Seller to Buyer will remain Seller's property, must be used solely in connection with the resale of the Products, and must be returned to Seller immediately upon demand at Buyer's expense.

(e) Buyer shall obtain Seller's prior written approval before using, or permitting the use of, any promotional materials or advertising that bear any of the Identifications.

**7. BRAND IDENTIFICATION AND MINIMUM STANDARDS.** Buyer acknowledges that the Identifications represent to the motoring public the manufacture and sale of quality Products. Buyer shall undertake no action of any kind that may harm or degrade the Identifications. Buyer further acknowledges that uniform standards of quality and appearance must be maintained at all retail outlets displaying the Identifications in order to properly market and sell the Products, preserve and promote the reputation of Seller, and achieve public acceptance of the Products. Accordingly, Buyer shall comply with, and cause the operators of Buyer's Outlets to comply with, all standards of operation and appearance established from time to time by Seller, including, without limitation, the following minimum obligations; provided, however, the means and the manner of performance are within the sole discretion of Buyer:

(a) Buyer shall comply with the Retail Visual Identity Design Standards and Conversion guidelines ("Image Guidelines") as may be amended by Seller or Shell from time to time. If Seller or Shell amends the Image Guidelines, Seller shall provide Buyer written notice.

(b) Buyer acknowledges receipt of, or has been informed on how to access through the online website of Seller and/or SHELL, the brand standards pertaining to Seller's and SHELL'S operations, appearance, and cleanliness requirements ("Brand Standards"). At all times during the term of this Agreement, Buyer shall maintain, and cause the operators of Buyer's Outlets to maintain, Buyer's Outlets in accordance with the Brand Standards, as may be amended by Seller or SHELL from time to time. If Seller or SHELL amends the Brand Standards, Seller shall provide Buyer notice. If any Buyer's Outlet fails to meet the Brand Standards, Buyer shall de-identify the Buyer's Outlet upon notice from Seller in accordance with Article 23.

(c) The Products must be diligently and efficiently merchandised and promoted at Buyer's Outlets.

(d) The operations at Buyer's Outlets must be conducted in a professional and business-like manner and the public must be provided with prompt, courteous, and efficient service.

(e) Buyer shall promptly and courteously respond to any customer complaints (including written responses when appropriate) and take immediate action to satisfactorily resolve each customer complaint.

(f) In order to operate Buyer's Outlets in an organized and efficient manner, adequate and competent personnel who are able to converse in English with Seller, customers, government officials, and other persons, considering both the volume and nature of the business activity, must be maintained at Buyer's Outlets.

(g) The operators and employees at Buyer's Outlets shall wear neat, clean uniforms of a type and style approved by Seller; provided, however, for uniforms with Buyer logos, such approval will not be unreasonably withheld.

(h) All service work at Buyer's Outlets must be performed in a workmanlike manner utilizing only first-class new materials and parts except when the customer specifically authorizes rebuilt or used materials or parts.

(i) Buyer's Outlets must be kept in a clean, sanitary, and safe condition and all property and equipment kept in good operating condition and repair. The driveways, sidewalks, and other landscaped areas must be kept in a neat and orderly appearance free from weeds, debris, snow, ice, and rubbish.

- (j) Buyer's Outlets may not be used for any unlawful, offensive, hazardous, unsightly, or other objectionable purpose, including, but not limited to, the sale or display of materials with dominant themes of sex, nudity, prurient interest, or pornography, which are unacceptable under local community standards. Merchandise or paraphernalia that is morally offensive or distasteful to the general public may not be displayed or offered for sale at Buyer's Outlets.
- (k) Buyer's Outlets must be kept clear of vehicles, other mobile equipment, and obstructions that restrict traffic flow, endanger customer safety, or detract from appearance. Buyer's Outlets may not be used to sell, lease, or store motor vehicles, trailers, boats, or other mobile equipment, without Seller's prior written consent.
- (l) Buyer's Outlets must be operated in a secure manner so that criminal activity is adequately deterred from occurring there and so that all persons at Buyer's Outlets are adequately protected from injury, harm, or loss. Buyer has complete control over and the sole responsibility for security at Buyer's Outlets.

**8. SELLER'S MARKETING RIGHTS.** SHELL or Seller may, from time to time: (a) add, change, or modify the grade, Product brand name, delivery package, or other distinctive designation of any Product; (b) change or modify the formulations and specifications of any Product; and (c) upon 30 days' prior notice, discontinue at any time the sale of any Product in which event the parties will be relieved of any further obligation with respect to that Product.

**9. SALES AND MARKETING OBLIGATIONS.**

- (a) Buyer shall use its reasonable efforts to develop and actively promote the sales of Products. Nothing in this Agreement grants Buyer an exclusive territory to market and resell the Products. Seller reserves the right to market and sell, and authorize others to market and sell, the Products in any manner Seller chooses, including, without limitation, through its own retail outlets or through designated wholesalers or other buyers.
- (b) Buyer shall keep all Buyer's Outlets supplied on a timely basis with sufficient volumes and quantities of Products to meet the needs and demands of all Buyer's Outlets and their customers. Buyer shall maintain a sufficient amount of all grades of Seller's branded gasoline and, if applicable, branded diesel fuel at Buyer's Outlets.
- (c) Buyer shall not sell, deliver, or otherwise supply the Products to retail outlets Seller has not authorized, in writing, Buyer to supply. Further, Buyer shall not supply the Products to any reseller or retailer who Buyer knows or has reason to know will resell the Products under trademarks or brand names other than those of Seller.

**10. TRAINING.**

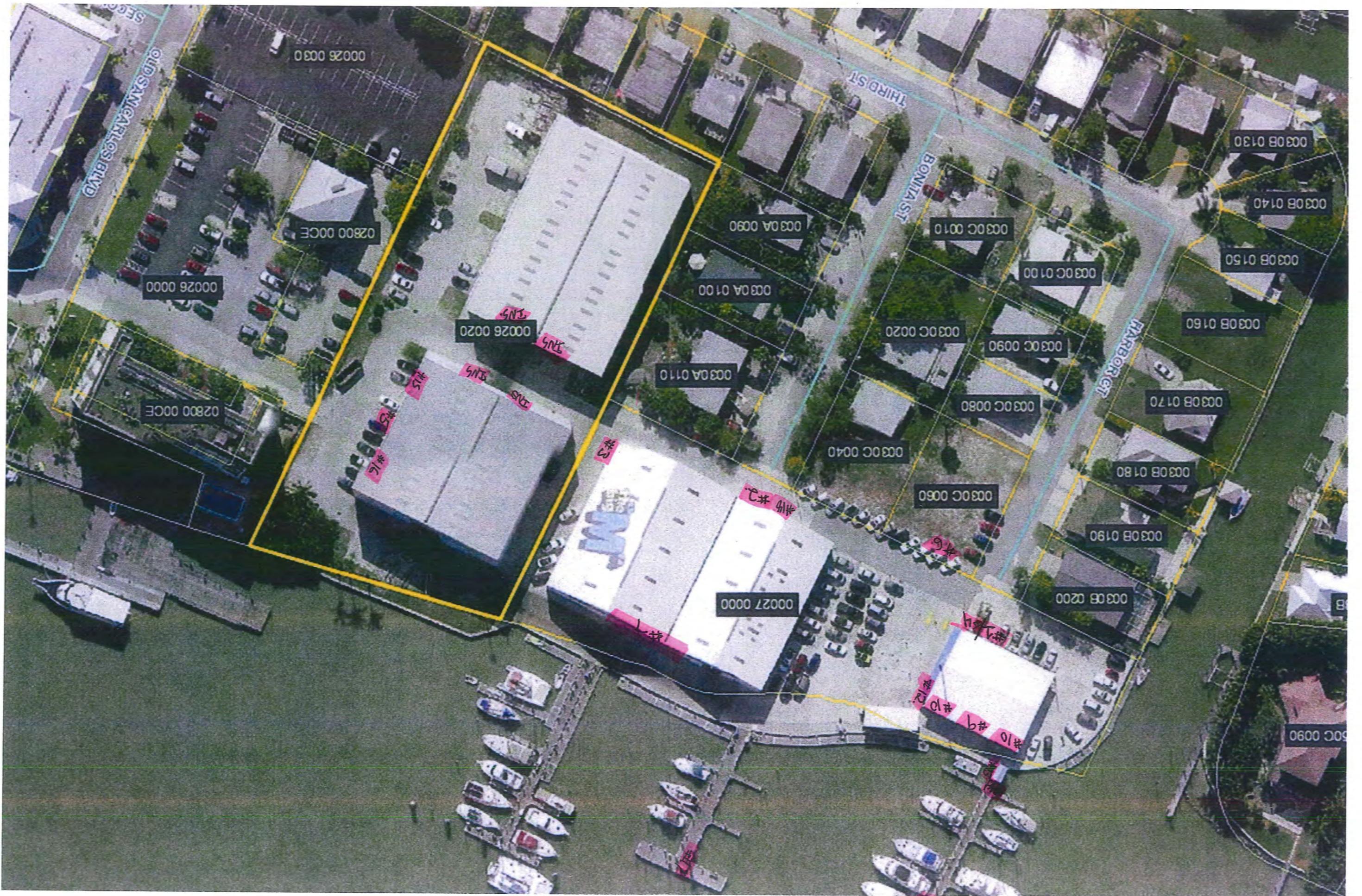
- (a) Buyer shall attend and shall cause all the managers or operators of Buyer's Outlets to attend a minimum of 2 days (16 hours) of Shell approved training courses or courses deemed appropriate by Shell for each year of the term of this Agreement, as and if required by Shell. The training will be conducted at a training facility designated by Seller.
- (b) Buyers without previous automobile service station, motor fuel dispensing station, or convenience store experience shall attend the appropriate initial new Buyer training class and shall cause all the operators of Buyer's Outlets without such previous experience to attend the appropriate initial new Buyer training class. The training will be conducted at a training facility designated by Seller.
- (c) Upon Seller's request, Buyer shall provide proof of training for Buyer, Buyer's managers, and the operators of Buyer's Outlets. Buyer shall have available and utilize training equipment, materials, and programs made available by Seller from time to time for training purposes.
- (d) Buyer shall distribute Seller's communications relating to training and Seller's training materials within 90 days after receipt to Buyer's employees and the operators and employees of Buyer's Outlets.

**11. DELIVERIES.**

- (a) POINT OF DELIVERY: 2631 Johnson Rd., Benson, AZ 85602
- (b) Title and risk of loss passes to Buyer when Products pass from Seller's delivery line into the receiving connection of Buyer's tank unless otherwise agreed to by Seller.

**12. TRANSACTION CARDS.**

- (a) As long as Seller elects to accept specified credit cards, credit identifications, debit cards, pre-paid cards, or other transaction authorization cards (collectively "Transaction Cards") in the state in which Buyer's Outlets are located, Buyer shall accept all Transaction Cards identified in Seller's Transaction Card guide ("Guide") for the purchase of authorized products and services. Buyer shall account for and process, and cause the operators of Buyer's Outlets to account for and process, all such transactions in strict compliance with the terms set forth in the Guide, as may be amended by Seller from time to time. If Seller amends the Guide, Seller shall provide Buyer with notice. Seller may assess Buyer a Transaction Card processing fee for providing such services.
- (b) Seller shall accept from Buyer all transactions generated as a result of purchases made with authorized Transaction Cards and processed in accordance with the terms in the Guide. At Seller's option, Seller shall pay the amount of the transactions to Buyer, after deducting any processing fee in effect under Seller's then current Guide, by: (1) setting off the amount against Buyer's account with Seller; (2) a credit to Buyer's bank account by EFT.
- (c) For each transaction not authorized, disputed by a customer, or otherwise subject to chargeback under the Guide, Seller may either charge the amount to Buyer's account or require Buyer to make immediate refund to Seller, including refund by draft or EFT initiated by Seller, without any deduction for any processing fee.
- (d) In order to provide efficient service to the motoring public, Buyer shall comply with Seller's software and hardware standards, established from time to time by Seller, relating to Electronic Point of Sale ("EPOS") systems, including, but not limited to, Seller approved compatible hardware, customer activated terminals, integrated and non-integrated EPOS systems, and other requirements necessary to electronically accept and process the Transaction Cards at all times during the term of this



OLD SAM CARLOS BLVD

THIRD ST

BONITA ST

HARBOR ST

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02800 000CE

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0030A 0110

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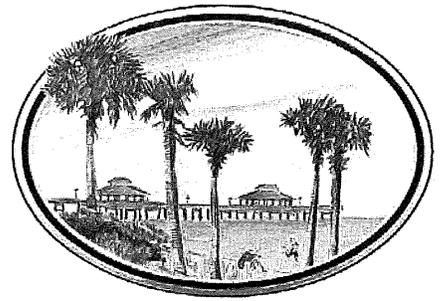
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# *Town of Fort Myers Beach*

## **Memorandum**

**To:** Local Planning Agency  
**From:** Leslee Chapman, Zoning Coordinator  
**CC:** Walter Fluegel, Community Development Director  
**Date:** March 1, 2013  
**Re:** VAR2011-0007, Moss Marine Sign Variance

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Following the February 12th Local Planning Agency meeting, LPA voted 7-0 to grant the applicant a continuance to the March 12<sup>th</sup> meeting. This continuance was granted with the understanding that all packet materials and evidence be submitted to Staff by end of business on February 25<sup>th</sup>. This additional time was granted to allow the applicant to provide the necessary evidence (including but not limited to a site plan locating each sign requested to remain, exactly how much sign area the applicant wishes to retain, and justification as to why each sign is necessary) for LPA to make a recommendation to Town Council.

The applicant did supply Staff with additional materials by the February 25<sup>th</sup> deadline. The materials were submitted via email attachments with no direction as to what documents pertained to which case, the HDD2012-0001 case or the VAR2011-0007 case. Staff has assembled our best guess as to which documents go where, and this material is attached to this memo.

The original Staff report, written in August of 2012, explained that there are two businesses located on the subject property each entitled to 32 square feet. Final tabulation of total on-site signage, as calculated by Staff, has resulted in the Big M with 168.25 square feet and Moss Marine with 311 square feet. This continues to be an expansive request made by the applicant to retain such a sizeable amount of signage with virtually no rational or justification for the request.

The applicant provided no direction with their submittal documents; therefore Staff finds the easiest way to review this submittal is page by page.

### Page 1

The applicant provides two definitions for 'directional sign' and 'commercial sign', neither of which is the adopted definition found in Chapter 30 of the Town of Fort Myers Beach Land Development Code. For reference both those definitions are included as follows:

**Commercial message.** Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. For purposes of this chapter, terms such as sale, special, clearance, or other words which relate to commercial activity shall be deemed to be commercial messages. The identification by name of an apartment or condominium development on a residential sign at the apartment or condominium development site shall not be considered to be a commercial message.

**Directional sign.** Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area and contains no commercial message.

The applicant states they need to keep all their directional signs in order to move customers around the subject property. However, the definition of directional sign clearly states “and contains no commercial message.” The applicant has not provided a grand total of the signage they would consider directional (unclear as to whose definition they are using), a justification as to why they need it or at the very least a site plan or locational map that indicates where each of these directional signs exist.

The applicant continues on to state that the subject property is at the terminus of two roads and therefore the signs need to be seen from 300 feet away. Staff wonders how is the subject property’s location is any different than any other business on Estero Island that wishes their customers could see their sign from farther down the road? All those business establishments have come into compliance with Chapter 30; the applicant has not presented a compelling case as to why they cannot comply.

The applicant also addresses a perceived need for signage viewed from the water. This is a tough assertion for Staff to analyze. Chapter 30 admittedly does not contemplate signs viewed from a navigable channel.

And finally the applicant states the size of the parcel (3 acres) and the area of building sides (46,200 square feet) and rationalizes that the 4 commercial signs they wish to keep – signs not clearly identified anywhere in the submittal documents – only total 384.25 square feet. Unfortunately for the applicant, Chapter 30 does not take into consideration the size of the parcel or the buildings on the parcel when calculating the allowable signage. Chapter 30 clearly states that for commercial uses in commercial zoning districts *For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.*

#### Page 2

With no labels or notations on this page, Staff is unclear as to what this exhibit is in reference to.

#### Pages 3-7

Without a table or chart illustrating the size and total square feet of each sign shown on page 3-7 Staff is unclear as to exactly how much sign area is being requested. Additionally without a site plan or locational diagram, Staff does not know where each of these signs are located on the subject property. The applicant is identifying a large portion of the signage shown on these pages as directional signs, however, the definition of directional sign clearly states: *and contains no commercial*

message. Furthermore, even if these signs were determined to be directional signs, Chapter 30 does not exempt them from the total sign area. If the applicant wishes to request relief from their current directional signage counting towards the total sign area permitted, they need to make that request clear. Missing is a chart or table identifying how many signs they deem 1)directional, 2)commercial message, 3)incidental and 4)instructional. Without this information Staff cannot analyze the magnitude of the applicant's request and determine if the request truly is the minimum variance necessary.

Page 8

With no labels or notations on this page, Staff is unclear as to what this exhibit is in reference to.

Page 9

The language in this letter from Walter Thomas of Thomas & Company, whom Staff is assuming is the applicant's insurance provider is vague and does not supply specifics as to which signs Mr. Thomas claims are necessary for safety compliance.

Page 10-12

This is the applicant's agreement with Shell Oil. However, again the applicant's failure to link the agreement to specifics on sign size leaves Staff with difficulty in providing analysis. Is the applicant requesting that the signage for Shell Oil be exempt? Is the applicant inferring that Shell Oil gas pumps are a separate business and thus changing the entire basis for calculating sign area on the subject property?

Section 34-87

Since it has been over 8months from the date of the original Staff report, Staff wanted to include additional and now revised analysis using the five decision making factors described in LDC Section 34-87(3). Staff recommends the following findings and conclusions

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The applicant, has maintained that their 3± acre parcel and 46,200 square feet of building sides are the 'exceptional or extraordinary circumstances' inherent on the subject property that keeps them from conforming to the standards set forth in Chapter 30.

Staff does not find that a large parcel or a waterfront business is exceptional or extraordinary, therefore Staff recommends the finding that there **are not** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that it **does not** justify the variance.

- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

Staff was not able to find any permit records as to when the current and existing wall signs were installed, however the applicant maintains that the signs were in place prior to the adoption of the original sign ordinance in 1999.

Staff finds that the conditions justifying the variance **are not** the results of actions of the applicant taken after the adoption of the regulation in question.

- c. *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The application does not discuss why the existing wall signs, that total approximately 408 square feet, are the minimum necessary. Furthermore, the applicant has not provided a complete inventory and assessment and site plan of all signs on the subject property which makes it difficult to assess the degree of variance actually being requested.

Therefore based on limited evidence as to the necessity of the request, Staff finds that the variance requested **is not** the minimum variance necessary to relieve an undue burden.

- d. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The applicant is requesting relief from total sign area requirements of Chapter 30 of the LDC, effectively requesting over six times permitted sign area, per 30-153(b)(1).

It is Staff's opinion that there is not a justifiable reason or hardship that exists on the subject property, and the applicant has not provided any compelling evidence that would justify or permit the granting of a sign area variance by Town Council. Staff therefore finds that granting the variance **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including area and prohibited types) and has made a decision to enact and enforce a uniform sign code.

Staff finds that the circumstances of the specific piece of property on which a variance is sought **are** general in nature and therefore do not demonstrate a verifiable hardship.

### Conclusion

After reviewing the submittal documents from the applicant, Staff is even more unclear as to what exactly the applicant is requesting. Unfortunately, the applicant has not provided a narrative summary explaining the relevance of the supporting documentation while also failing to provide any justification for the actual request. Missing from the documents provided was a site plan or locational

map indicating where each sign requesting to remain is on the subject property, and a chart or table of exactly how much sign area is requested to remain for each business on the subject property so that Staff can analyze how the applicant arrived at 384.25 square feet, and if that truly is the minimum variance necessary.

Therefore, Staff recommends that the LPA **DENY** VAR2011-0007 Moss Marine sign variance.

**DIRECTIONAL SIGN (definition)** - Signs designed to provide direction to pedestrian and vehicular traffic.

We find it necessary to keep all of the Directional signs we have in place to direct both vehicular and vessel traffic for the several hundred customers we have per day . Again, it is a 3 acre parcel with 3 vehicle entrances, 600 ft of waterway frontage with 70,778 sq ft of submerged land leased from the state of Florida , 2 businesses and several different parking areas.

**WARNING & SAFETY SIGNS** - We have warning and safety signs posted at the entrances to all of our barns and on our docks. These are required by both our insurance and OSHA for the safety of our customers and to reduce our liability. (letter from Insurance agent attached)

**COMMERCIAL SIGN (definition)** - Privately owned (usually on-site) advertising structures used on roofs, walls or other outdoor surfaces of business.

Our commercial signs affect ZERO through road traffic as we are at a dead end of 2 roads and a parking lot.

The signs at the entrance from both Bonita St & Harbor Ct must be able to be seen from over 300 ft away.

Our waterside signs need to be big enough to be seen by approaching vessels from the navigable channel which is approximately 350 - 700 ft away. Boat traffic must have the time to make navigational adjustments when there are variables such as high traffic, bad weather and incoming/outgoing tides to consider.

We have approximately 46,200 sq ft of available building sides and the 4 "commercial" signs we would like to keep total of 384.25 sq ft which is less than 1% of that space.

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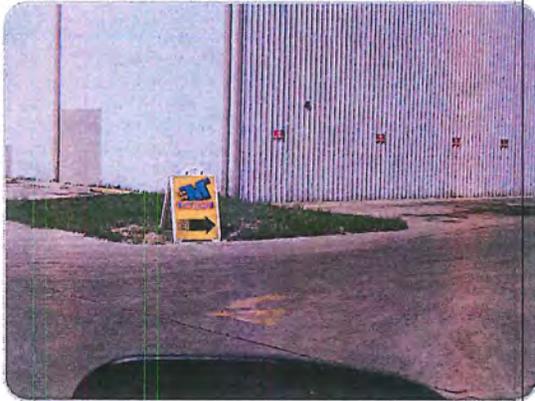
VAR2011-0007  
applicant Resubmittal rec'd 2/25/13

(1)



# Moss Marine

Case FMBVAR2011-0007



Shot 1: Sandwich Board

ACTION: Removed



Shot 2: Shell Fuel Sign

ACTION: Required for Fuel Contract with Shell Oil

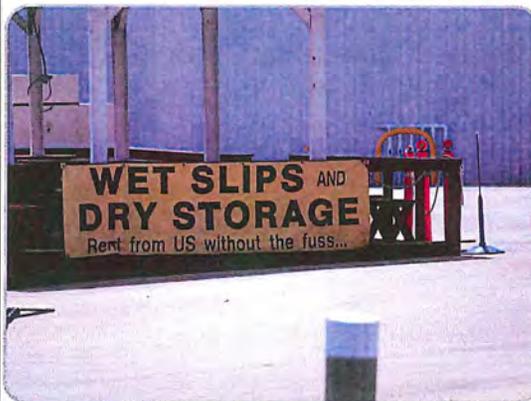


Shot 3: Live Bait

ACTION: Removed



Shot 4: Water View of Ship Store



Shot 5: Banner Sign

ACTION: Removed



Shot 6: Live Bait Banner Sign

ACTION: Removed

# Moss Marine

Case FMBVAR2011-0007



Shot 7: Ship Store Identifier (16 sq ft)

**ACTION:** Will move to the inside the window



Shot 8: Moss/Casino sign on store

**ACTION:** Will be removed



Shot 9: Boaters Lounge

**ACTION:** Will move to the inside the window



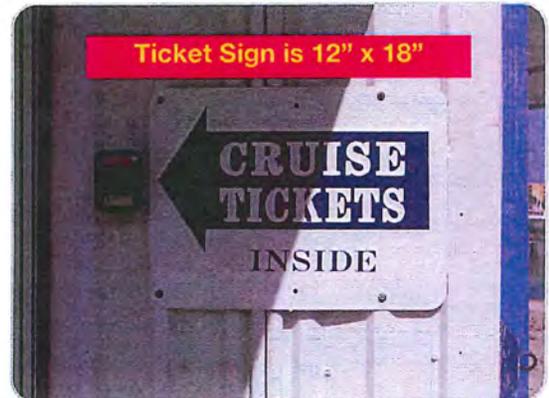
Shot 10: Big M Boarding Area

**ACTION:** Directional Boarding Sign- NO Action



Shot 11: Welcome Aboard (19.25 sq ft)

**ACTION:** Sign directing Big M passengers to the Boat.



Shot 12: Direction to Ticket office

**ACTION:** Directional Ticket sign- NO Action

Moss Marine

Case FMBVAR2011-0007



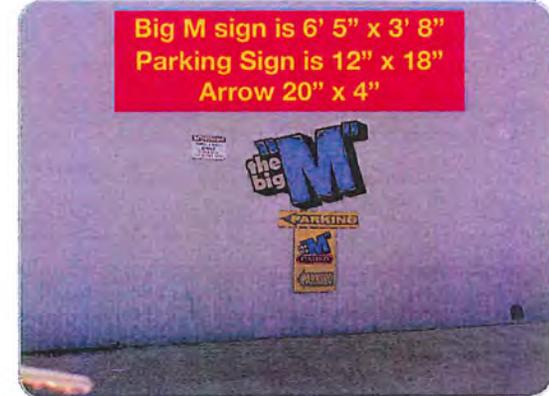
Shot 13: Commercial Identifier (48 sq ft) & Directional for valet parking

ACTION: None



Shot 14: VIP Parking Identifier

ACTION: DIRECTIONAL Parking - No Action



Shot 15: Commercial Identifier & Directional for Parking - No action

ACTION: NONE



Shot 16: Directional (located on back of property)

ACTION: DIRECTIONAL Parking - No action



Shot 17: Marina Guest Parking Identifier

ACTION: DIRECTIONAL Parking - No Action



Shot 18: Insurance required Liability Signs

ACTION: INSURANCE REQUIRED

Moss Marine

Case FMBVAR2011-0007



Shot 19: Contractor Sign

ACTION: Insurance - no action



Shot 20: Employee/Contractor/Vehicle

ACTION: Insurance - no action



Shot 21: Directional arrow for parking

ACTION: DIRECTIONAL Parking - No Action



Shot 22: Contractors

ACTION: Insurance - no action



Shot 23: Employees Only

ACTION: Insurance - no action



Shot 24: Marina Parking

ACTION: DIRECTIONAL Parking - No Action

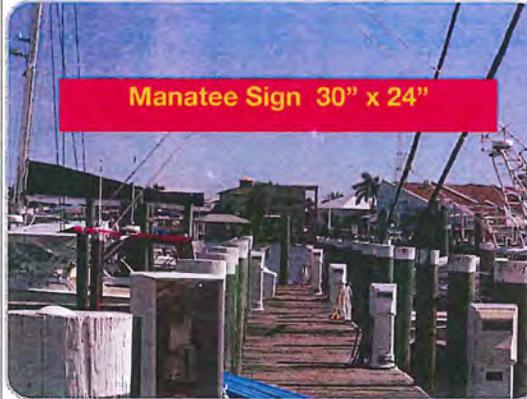
# Moss Marine

Case FMBVAR2011-0007



Shot 25: NO Fishing

**ACTION:** Directional Notice/Dock rules  
- No action



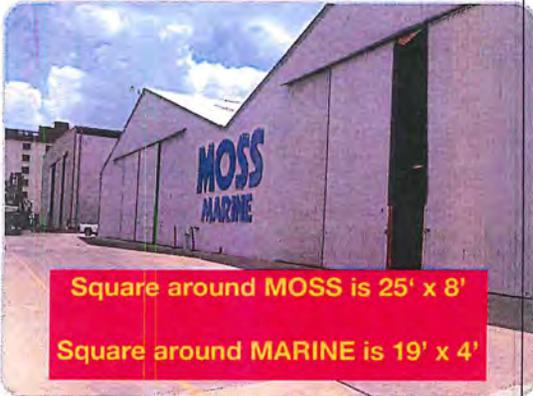
Shot 26: Manatee Sign

**ACTION:** Required by FWC & DEP - No Action



Shot 27: Loading Area Signs

**ACTION:** Directional for boaters No Action



Shot 28: Commercial MOSS MARINE Identifier (275 sq ft total)

**ACTION:** Would like to keep

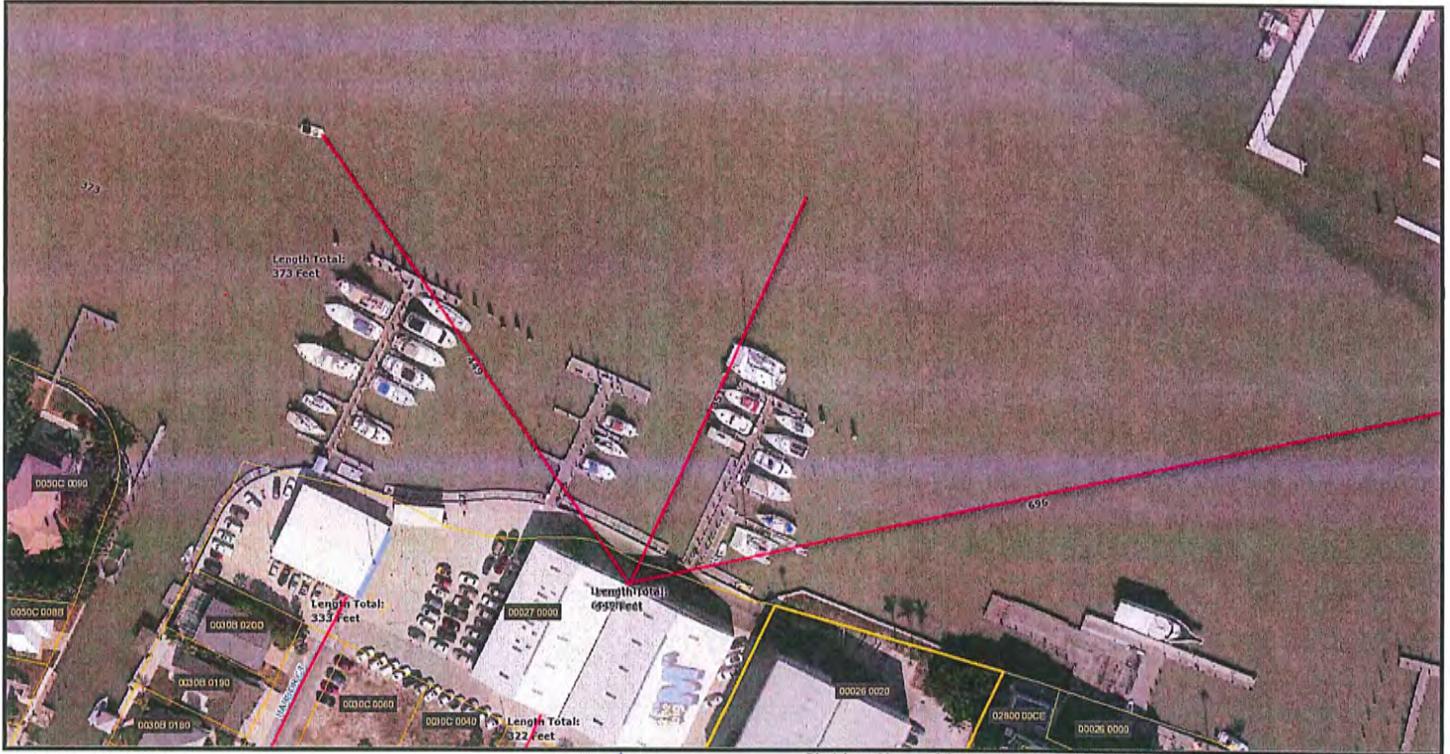


Shot 29: Highlighted area shows ship store and A/B barn

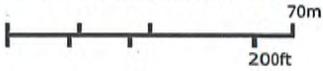


Shot 30: Highlighted area shows C&D barns

# Lee Property Appraiser GeoView Map



Map printed: 2/24/2013 9:47 PM



Disclaimer: Maps and documents made available to public by the Lee County Property Appraiser's office are not legally recorded maps or surveys and therefore are not intended to be used as such. The maps and documents are created as part of a Geographic Information System (GIS) that compiles records, information and data from various departments, cities, county, state and federal sources. The source data may contain errors. Users are encouraged to examine the documentation or metadata associated with the data on which the map is based for information related to its accuracy, currentness, and limitations.

## Aerial Imagery

2012 Hi-Res (1/2 foot)

## Parcels and Streets

-  Parcel Lines
-  Street Centerlines
-  Delinquent Tax Parcels

THOMAS & COMPANY  
MARINASURE®  
P.O. BOX 60252  
FT. MYERS BEACH, FL 33906  
(239) 931-7171 Fax (239) 931-7176

To Whom it May Concern:

Please be advised that the signage in question at Moss Marine concerns safety issues and is at the recommendation of the Safety Engineers employed or contracted with the Insurance companies which specialize in insuring Marina.

Much of this signage address safety issues as put forth by OSHA, EPA and DNR and are a mandate by them.

Should you require any further assistance, please to not hesitate to contact me.

Sincerely,

Walter W. Thomas

Pres. Thomas & Company

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# RETAILER PRODUCT SALES AGREEMENT (Shell Brand)

THIS AGREEMENT is between Moss Marine, Inc. (buyer) whose address is 450 Harbor Ct Fort Myers Beach Fl 33931 and Edison Oil Company (seller) whose address is 6940 Mission Lane Fort Myers Fl 33916

**DEFINITIONS.** As used in this Agreement, the terms below have the following meanings, whether singular or plural:

- (a) "Business Entity" - Any legal entity that is not an individual or sole proprietorship, including, without limitation, a partnership, corporation, limited liability company, limited liability partnership, or association.
- (b) "Buyer's Marketing Premises" - Buyer's premises, including, but not limited to, Buyer's office and storage, and distribution facilities that Buyer uses in connection with the Products.
- (c) "Buyer's Outlets" - Those retail outlets, including marinas and truck stops, operated or supplied by Buyer and which Seller has authorized Buyer to display the Identifications in connection with the resale of the Products to consumers.
- (d) "Identifications" - The trademarks, trade dress, service marks, and color schemes relating to the Shell brand licensed to Buyer by Seller under the terms of this Agreement for use by Buyer and Buyer's Outlets in connection with the marketing and sale of the Products.
- (e) "Law" - Any applicable statute, constitution, ordinance, regulation, rule, administrative order, or other requirement of any federal, state, or local government agency or authority in effect at the time of execution, or during the term, of this Agreement.
- (f) "Plant" - The distributing plant from which deliveries of Petroleum Products are made to Buyer.
- (g) "PMPA" - The Petroleum Marketing Practices Act as may be amended from time to time (15 U.S.C. §2801 et seq.).
- (h) "Products" - The gasoline and diesel fuel sold to Buyer by Seller for resale under the Identifications.

## 2. PURCHASE AND SALE OF PRODUCTS.

(a) Subject to Articles 18 and 19, Seller shall sell and deliver to Buyer, and Buyer shall purchase and accept from Seller, the minimum quantities of Products identified in Exhibit A during each month and year during the term of this Agreement ("Minimum Quantities"). Buyer acknowledges that the Minimum Quantities are necessary and reasonable for, among other reasons, Seller to plan its supply operations and, as such, are of material and reasonable significance to the franchise relationship. Buyer also acknowledges that Seller has established minimum volume levels for gasoline ("Base Volume") to be resold through Buyer's Outlets for its customers in order to retain a Wholesale Marketer Agreement. Accordingly, in no event may Buyer's Minimum Quantities be less than the following Base Volume:

If the Minimum Quantities are less than the minimum Base Volume, the Minimum Quantities are deemed amended to be the same as the minimum Base Volume; and the Maximum Quantities will be proportionately increased. If Buyer fails to purchase this minimum Base Volume, Seller may take such action as Seller deems appropriate, including, without limitation, terminating or not renewing this Agreement.

(b) Seller may, but will not be obligated to, sell Buyer more than the "Maximum Quantities" identified in Exhibit A. Seller's exercise of its right to do so will not obligate Seller to continue to sell Buyer such excess quantities.

(c) To the extent practicable, Buyer shall take delivery of all Products on a ratable basis.

(d) If Buyer fails to purchase and accept the Minimum Quantities in any 12-month period, Seller may unilaterally downward adjust the Minimum/Maximum Quantities each succeeding 12-month period by the difference between the annual Minimum Quantities and the amount actually purchased for that 12-month period. In addition, Buyer may request that Seller downward adjust Buyer's Minimum/Maximum Quantities if the need for the downward adjustment is due to a reason beyond Buyer's reasonable control. If Seller agrees that the reason is beyond Buyer's reasonable control, Seller shall downward adjust the Minimum/Maximum Quantities each succeeding 12-month period by the difference between the annual Minimum Quantities and the amount actually purchased for that 12-month period. Likewise, if Buyer purchases more than the Minimum Quantities, Buyer may request that Seller upward adjust Buyer's Minimum/Maximum Quantities. If Seller agrees, the Minimum/Maximum Quantities will be upward adjusted for each succeeding 12-month period.

(e) If the term of this Agreement commences at any time after January 1st of any year during the term of this Agreement, Buyer must purchase and accept the Minimum Quantities during the remaining months of that 12-month period, but Seller's rights and remedies set forth in Articles 2(a) and (d) above will not commence until the next full 12-month period.

(f) If Buyer terminates this Agreement prior to the expiration of its term or if Seller terminates this Agreement for cause in accordance with the PMPA or applicable Law, Seller will be entitled to all remedies available at Law or in equity. Notwithstanding the foregoing, if Buyer terminates this Agreement and Buyer's Outlets remain branded under the Identifications, Seller may waive its remedies pursuant to this article.

## 3. PRICES AND TERMS OF PAYMENT.

(a) PRICES: For Gasoline and Diesel Fuel: Seller's price to retailer in effect at time of delivery.

(b) TERMS OF PAYMENT: Gasoline and Diesel Fuel terms are net seven days EFT subject to credit approval.

(c) Seller may charge Buyer interest, at a reasonable lawful rate per annum, on all overdue sums owed to Seller. Further, if Buyer fails to make timely payment of any amount due Seller, in addition to all other rights or remedies available, Seller may take such action as Seller deems reasonable under the circumstances. Without limiting the generality of the foregoing, Seller may setoff or equitably recoup against any amount then due Buyer, defer further deliveries of the Products until payment of all outstanding indebtedness is made, and demand advance cash payment for further deliveries. Buyer shall comply with the terms

of any commercially acceptable reclamation notice issued to Buyer by Seller under applicable Law.

**4. TERM.** The term of this Agreement is ten years subject to the Seller's right to terminate or not renew this Agreement in accordance with applicable law. Upon expiration, this Agreement will continue on a month-to-month basis until the parties execute a new agreement or Seller terminates or does not renew this Agreement in accordance with applicable law. The term begins on the date of the first delivery of Shell gasoline.

## **5. PERMISSION TO USE THE IDENTIFICATIONS**

(a) Seller grants to Buyer permission to use the Identifications only in connection with the resale of the Products and so long as Buyer complies with the terms of this Agreement. Buyer acknowledges that the Identifications are a valuable and important property right and are essential to the goodwill and reputation of the Products. Buyer further acknowledges Seller's interest in the Identifications and Buyer shall not claim any right to or title or interest thereto.

(b) Buyer must obtain Seller's prior written authorization to use and display, or permit the use and display of, the Identifications at any retail outlet.

(c) Buyer shall follow all rules, regulations, standards, and guidelines Seller establishes from time to time relating to the use and display of the Identifications in connection with the resale of the Products.

**6. PRODUCT STEWARDSHIP AND QUALITY.** Pursuant to Seller's permission to grant Buyer use of the Identifications, Buyer shall comply with the following requirements relating to the marketing, storage, and resale of the Products.

(a) Buyer shall not resell, nor may any operator of Buyer's Outlets resell, gasoline at Buyer's Outlets other than the gasoline purchased by Buyer from Seller to be resold under the Identifications pursuant to the terms of this Agreement.

(b) The quality of the Products must be strictly maintained and not adulterated, commingled, or blended with any other products or substances in any manner.

(c) All Products must be clearly identified, correctly labeled, and resold under their proper Identifications and grades.

(d) All signs and other advertising devices or materials furnished by Seller to Buyer will remain Seller's property, must be used solely in connection with the resale of the Products, and must be returned to Seller immediately upon demand at Buyer's expense.

(e) Buyer shall obtain Seller's prior written approval before using, or permitting the use of, any promotional materials or advertising that bear any of the Identifications.

**7. BRAND IDENTIFICATION AND MINIMUM STANDARDS.** Buyer acknowledges that the Identifications represent to the motoring public the manufacture and sale of quality Products. Buyer shall undertake no action of any kind that may harm or degrade the Identifications. Buyer further acknowledges that uniform standards of quality and appearance must be maintained at all retail outlets displaying the Identifications in order to properly market and sell the Products, preserve and promote the reputation of Seller, and achieve public acceptance of the Products. Accordingly, Buyer shall comply with, and cause the operators of Buyer's Outlets to comply with, all standards of operation and appearance established from time to time by Seller, including, without limitation, the following minimum obligations; provided, however, the means and the manner of performance are within the sole discretion of Buyer:

(a) Buyer shall comply with the Retail Visual Identity Design Standards and Conversion guidelines ("Image Guidelines") as may be amended by Seller or Shell from time to time. If Seller or Shell amends the Image Guidelines, Seller shall provide Buyer written notice.

(b) Buyer acknowledges receipt of, or has been informed on how to access through the online website of Seller and/or SHELL, the brand standards pertaining to Seller's and SHELL'S operations, appearance, and cleanliness requirements ("Brand Standards"). At all times during the term of this Agreement, Buyer shall maintain, and cause the operators of Buyer's Outlets to maintain, Buyer's Outlets in accordance with the Brand Standards, as may be amended by Seller or SHELL from time to time. If Seller or SHELL amends the Brand Standards, Seller shall provide Buyer notice. If any Buyer's Outlet fails to meet the Brand Standards, Buyer shall de-identify the Buyer's Outlet upon notice from Seller in accordance with Article 23.

(c) The Products must be diligently and efficiently merchandised and promoted at Buyer's Outlets.

(d) The operations at Buyer's Outlets must be conducted in a professional and business-like manner and the public must be provided with prompt, courteous, and efficient service.

(e) Buyer shall promptly and courteously respond to any customer complaints (including written responses when appropriate) and take immediate action to satisfactorily resolve each customer complaint.

(f) In order to operate Buyer's Outlets in an organized and efficient manner, adequate and competent personnel who are able to converse in English with Seller, customers, government officials, and other persons, considering both the volume and nature of the business activity, must be maintained at Buyer's Outlets.

(g) The operators and employees at Buyer's Outlets shall wear neat, clean uniforms of a type and style approved by Seller; provided, however, for uniforms with Buyer logos, such approval will not be unreasonably withheld.

(h) All service work at Buyer's Outlets must be performed in a workmanlike manner utilizing only first-class new materials and parts except when the customer specifically authorizes rebuilt or used materials or parts.

(i) Buyer's Outlets must be kept in a clean, sanitary, and safe condition and all property and equipment kept in good operating condition and repair. The driveways, sidewalks, and other landscaped areas must be kept in a neat and orderly appearance free from weeds, debris, snow, ice, and rubbish.

(j) Buyer's Outlets may not be used for any unlawful, offensive, hazardous, unsightly, or other objectionable purpose, including, but not limited to, the sale or display of materials with dominant themes of sex, nudity, prurient interest, or pornography, which are unacceptable under local community standards. Merchandise or paraphernalia that is morally offensive or distasteful to the general public may not be displayed or offered for sale at Buyer's Outlets.

(k) Buyer's Outlets must be kept clear of vehicles, other mobile equipment, and obstructions that restrict traffic flow, endanger customer safety, or detract from appearance. Buyer's Outlets may not be used to sell, lease, or store motor vehicles, trailers, boats, or other mobile equipment, without Seller's prior written consent.

(l) Buyer's Outlets must be operated in a secure manner so that criminal activity is adequately deterred from occurring there and so that all persons at Buyer's Outlets are adequately protected from injury, harm, or loss. Buyer has complete control over and the sole responsibility for security at Buyer's Outlets.

**8. SELLER'S MARKETING RIGHTS.** SHELL or Seller may, from time to time: (a) add, change, or modify the grade, Product brand name, delivery package, or other distinctive designation of any Product; (b) change or modify the formulations and specifications of any Product; and (c) upon 30 days' prior notice, discontinue at any time the sale of any Product in which event the parties will be relieved of any further obligation with respect to that Product.

## **9. SALES AND MARKETING OBLIGATIONS.**

(a) Buyer shall use its reasonable efforts to develop and actively promote the sales of Products. Nothing in this Agreement grants Buyer an exclusive territory to market and resell the Products. Seller reserves the right to market and sell, and authorize others to market and sell, the Products in any manner Seller chooses, including, without limitation, through its own retail outlets or through designated wholesalers or other buyers.

(b) Buyer shall keep all Buyer's Outlets supplied on a timely basis with sufficient volumes and quantities of Products to meet the needs and demands of all Buyer's Outlets and their customers. Buyer shall maintain a sufficient amount of all grades of Seller's branded gasoline and, if applicable, branded diesel fuel at Buyer's Outlets.

(c) Buyer shall not sell, deliver, or otherwise supply the Products to retail outlets Seller has not authorized, in writing, Buyer to supply. Further, Buyer shall not supply the Products to any reseller or retailer who Buyer knows or has reason to know will resell the Products under trademarks or brand names other than those of Seller.

## **10. TRAINING.**

(a) Buyer shall attend and shall cause all the managers or operators of Buyer's Outlets to attend a minimum of 2 days (16 hours) of Shell approved training courses or courses deemed appropriate by Shell for each year of the term of this Agreement, as and if required by Shell. The training will be conducted at a training facility designated by Seller.

(b) Buyers without previous automobile service station, motor fuel dispensing station, or convenience store experience shall attend the appropriate initial new Buyer training class and shall cause all the operators of Buyer's Outlets without such previous experience to attend the appropriate initial new Buyer training class. The training will be conducted at a training facility designated by Seller.

(c) Upon Seller's request, Buyer shall provide proof of training for Buyer, Buyer's managers, and the operators of Buyer's Outlets. Buyer shall have available and utilize training equipment, materials, and programs made available by Seller from time to time for training purposes.

(d) Buyer shall distribute Seller's communications relating to training and Seller's training materials within 90 days after receipt to Buyer's employees and the operators and employees of Buyer's Outlets.

## **11. DELIVERIES.**

(a) POINT OF DELIVERY: 2631 Johnson Rd., Benson, AZ 85602

~~(b) Title and risk of loss passes to Buyer when Products pass from Seller's delivery line into the receiving connection of Buyer's tank unless otherwise agreed to by Seller.~~

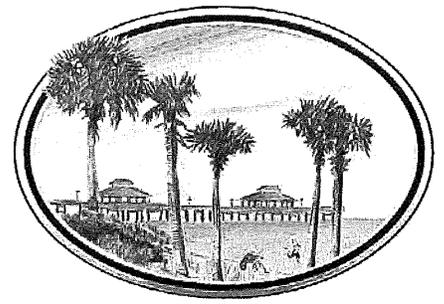
## **12. TRANSACTION CARDS.**

(a) As long as Seller elects to accept specified credit cards, credit identifications, debit cards, pre-paid cards, or other transaction authorization cards (collectively "Transaction Cards") in the state in which Buyer's Outlets are located, Buyer shall accept all Transaction Cards identified in Seller's Transaction Card guide ("Guide") for the purchase of authorized products and services. Buyer shall account for and process, and cause the operators of Buyer's Outlets to account for and process, all such transactions in strict compliance with the terms set forth in the Guide, as may be amended by Seller from time to time. If Seller amends the Guide, Seller shall provide Buyer with notice. Seller may assess Buyer a Transaction Card processing fee for providing such services.

(b) Seller shall accept from Buyer all transactions generated as a result of purchases made with authorized Transaction Cards and processed in accordance with the terms in the Guide. At Seller's option, Seller shall pay the amount of the transactions to Buyer, after deducting any processing fee in effect under Seller's then current Guide, by: (1) setting off the amount against Buyer's account with Seller; (2) a credit to Buyer's bank account by EFT.

(c) For each transaction not authorized, disputed by a customer, or otherwise subject to chargeback under the Guide, Seller may either charge the amount to Buyer's account or require Buyer to make immediate refund to Seller, including refund by draft or EFT initiated by Seller, without any deduction for any processing fee.

(d) In order to provide efficient service to the motoring public, Buyer shall comply with Seller's software and hardware standards, established from time to time by Seller, relating to Electronic Point of Sale ("EPOS") systems, including, but not limited to, Seller approved compatible hardware, customer activated terminals, integrated and non-integrated EPOS systems, and other requirements necessary to electronically accept and process the Transaction Cards at all times during the term of this



# *Town of Fort Myers Beach*

## **Memorandum**

**To:** Local Planning Agency  
**From:** Leslee Chapman, Zoning Coordinator  
**CC:** Walter Fluegel, Community Development Director  
**Date:** February 4, 2013  
**Re:** VAR2011-0007, Moss Marine Sign Variance Application

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As requested by Staff at the October meeting, LPA voted to continue case VAR2011-0007, Moss Marine sign variance, to the February 12 meeting.

This continuance was suggested by Staff and approved by LPA with the understanding that the additional time would allow the applicant to provide further details and submit narratives for each sign that would strengthen the justification for the request.

The original Staff report, written in August of 2012, explained that there are two businesses located on the subject property each entitled to 32 square feet. Final tabulation of total on-site signage has resulted in the Big M with 168.25 square feet and Moss Marine with 311 square feet. This continues to be an expansive request made by the applicant to retain such a sizeable amount of signage with virtually no rational or justification for the request.

Following the October LPA meeting Staff did not hear from the applicant until Ms. McDaniel replied to a December email from Staff, where she indicated that she would be in touch. No further communication was received from the applicant until a second Staff email was sent, this time in late January, reminding Ms. McDaniel of the February hearing date. There was a back and forth email discussion as to what needed to be provided for the case however, at the time of these emails the submittal deadline for packet materials had expired.

Staff does not feel that the level of analysis and justification provided by the applicant in October for this case will meet with the standards set by Council in the hearings of other sign variances. Keep in mind the burden of proof in justifying a variance always remains with the applicant as they must provide evidence that a hardship exists. As such, Staff can only evaluate the application based upon the information provided by the applicant.

Specifically, Staff is looking for a revised site plan identifying each sign and additional narrative explanation as to why each sign should remain and why no other signs can be removed. Therefore, with no additional information provided in the time granted by LPA, Staff recommends that the LPA **DENY** VAR2011-0007 Moss Marine sign variance.



# Town of Fort Myers Beach

## Memorandum

**To:** Local Planning Agency  
**From:** Leslee Chapman, Zoning Coordinator  
**CC:** Walter Fluegel, Community Development Director  
**Date:** October 3, 2012  
**Re:** VAR2011-0007, Moss Marine Sign Variance Application

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As directed by the LPA at the August 14<sup>th</sup> hearing, the applicant for Moss Marine and Staff have worked together to more precisely identify the actual and total sign area on the subject property through photos and measurements. The applicant has provided *Exhibit H*, see attached, which provides a visual of each sign as identified on a site visit by both Staff (Leslee Chapman) and the applicant (Emily McDaniel). Staff has provided *Exhibit I* which is a spreadsheet with numbers illustrating total square feet of signage on the subject property.

Also as directed by the LPA, the applicant has applied for designation for a Historically Significant Sign per LDC Section 30-57 for the roof sign on one of their storage barn. That request and justification will be heard under case number HDD2012-0001. Please see additional Memo for Staff's analysis of this request.

At the Monday October 1 Town Council meeting, two variances heard by the LPA at their August 14<sup>th</sup> meeting were heard by Council. Council made it very clear during both the hearings that they were not comfortable with the amount of information and analysis presented by the applicants justifying their variance requests. Council moved to continue both those hearings pending additional information from the applicants.

With this in mind, Staff does not feel that the level of analysis and justification provided by the applicant for this case will meet with the standards set by Council at Monday's meeting. Keep in mind the burden of proof in justifying a variance always remains with the applicant as they must provide evidence that a hardship exists

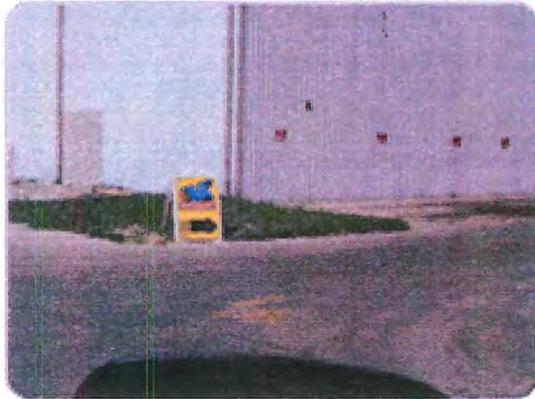
For example while *Exhibit H* is helpful in identifying all the signs on the subject property, this additional information requires an update to *Exhibit B* (site plan) locating each sign on the subject property, which is not included.

Further, as illustrated in *Exhibit I*, the applicant has removed a few signs (shaded in gray) and is proposing to remove one more additional sign (shaded in yellow). They are requesting to keep the remaining signs, however, and the justification as to why each sign should remain and why no other signs can be removed is not included. Staff suggests that one way for the applicant to address this is by providing a narrative for each sign in *Exhibit H* explaining why a variance is warranted for that particular sign.

The Staff report explained that there are two businesses located on the subject property each entitled to 32 square feet. Final tabulation of total on-site signage has resulted in the Big M with 168.25 square feet and Moss Marine with 311 square feet. This continues to be an expansive request made by the applicant to retain such a sizeable amount of signage with virtually no rational or justification for the request.

Staff is requesting that LPA continue case VAR2011-0007 to allow the applicant time to provide additional documents and the level of analysis that is necessary for the case to proceed through the LPA and onto Council. Staff recommends a continuance to the December 11, 2012 LPA meeting with materials due to Staff no later than November 13, 2012.

<b>Moss Marine</b>	Case	FMBVAR2011-0007		



**Shot 1: Sandwich Board**  
**ACTION: Removed**



**Shot 2: Shell Fuel Sign**  
**ACTION: Required for Fuel Contract with Shell Oil**



**Shot 3: Live Bait**  
**ACTION: Removed**



**Shot 4: Water View of Ship Store**



**Shot 5: Banner Sign**  
**ACTION: Removed**



**Shot 6: Live Bait Banner Sign**  
**ACTION: Removed**

Moss Marine	Case	FMBVAR2011-0007		



**Shot 7:** Ship Store Identifier  
**ACTION:** Would like to keep



**Shot 8:** Moss/Casino sign on store  
**ACTION:** Can be removed



**Shot 9:** Boaters Lounge  
**ACTION:** Would like to keep, but could move into window



**Shot 10:** Big M Boarding Area  
**ACTION:** Would like to keep, boarding nasses are taken here



**Shot 11:** Welcome Aboard  
**ACTION:** Would like to keep, but can live with out



**Shot 12:** Direction to Ticket office  
**ACTION:** Would like to keep

<b>Moss Marine</b>	Case	FMBVAR2011-0007		



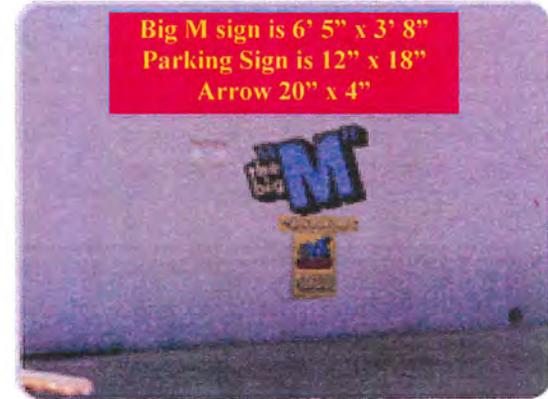
**Shot 13:** Commercial Identifier & Directional for valet parking

**ACTION:** Would like to keep both



**Shot 14:** VIP Parking Identifier

**ACTION:** Would like to keep



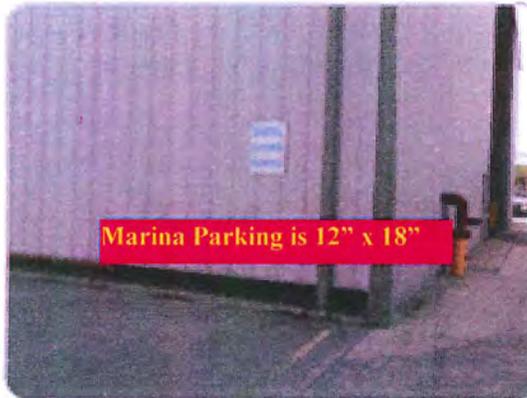
**Shot 15:** Commercial Identifier & Directional for Parking

**ACTION:** Willing to remove "the big M"



**Shot 16:** Directional (located on back of property)

**ACTION:** Would like to keep



**Shot 17:** Marina Guest Parking Identifier

**ACTION:** Would like to keep



**Shot 18:** Insurance required Liability Signs

**ACTION:** Have to keep per insurance

Moss Marine	Case	FMBVAR2011-0007		



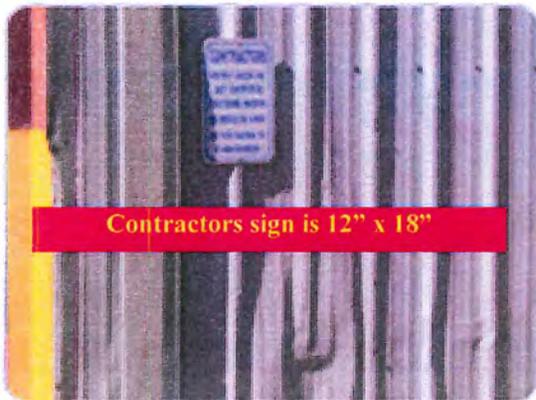
**Shot 19: Contractor Sign**  
**ACTION:** Required by insurance



**Shot 20: Employee/Contractor/Vehicle**  
**ACTION:** Required by insurance



**Shot 21: Directional for parking**  
**ACTION:** Would like to keep



**Shot 22: Contractors**  
**ACTION:** Required by insurance

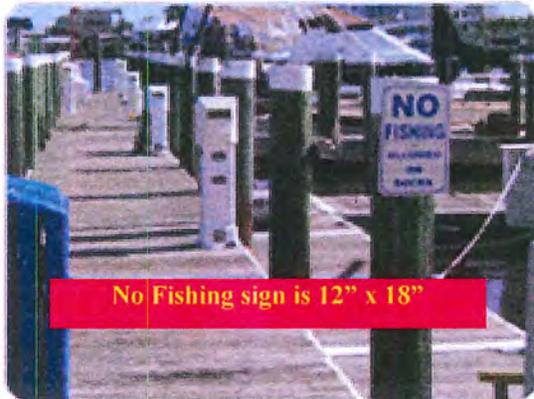


**Shot 23: Employees Only**  
**ACTION:** Required by insurance

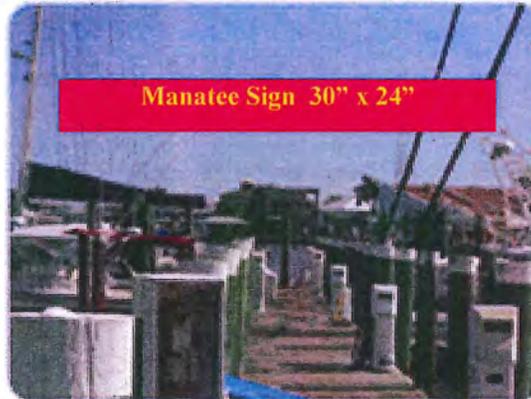


**Shot 24: Marina Parking**  
**ACTION:** Would like to keep

<b>Moss Marine</b>	Case	FMBVAR2011-0007		



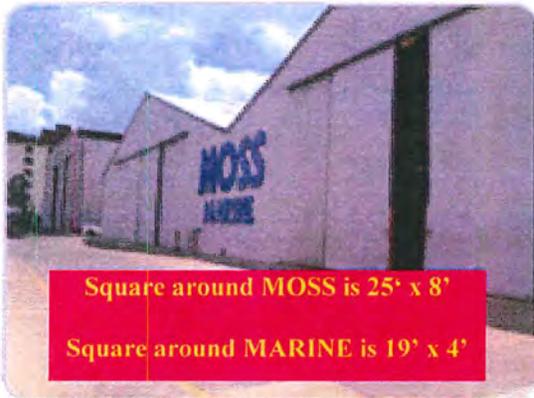
**Shot 25:** NO Fishing  
**ACTION:** Notice/Dock rules



**Shot 26:** Manatee Sign  
**ACTION:** Required by FWC & DEP



**Shot 27:** Loading Area Signs  
**ACTION:** Would like to keep



**Shot 28:** MOSS MARINE Identifier  
**ACTION:** Would like to keep



**Shot 29:** Highlighted area shows ship store and A/B barn



**Shot 30:** Highlighted area shows C&D barns

<b>Moss Marine</b>	<b>Case</b>	FMBVAR2011-0007		



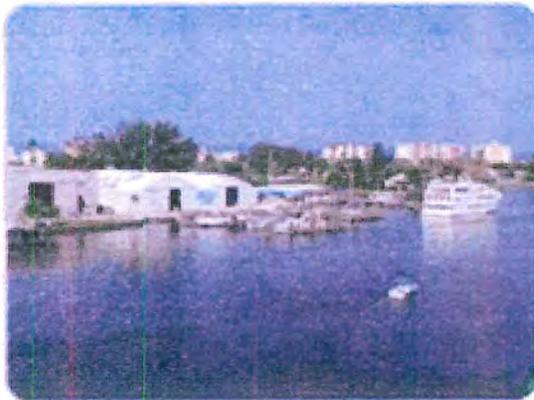
**Shot 31:** Property Photo showing how NON invasive the existing signs are in ration to the buildings & property size



**Shot 32:** Property Photo showing how NON invasive the existing signs are in ration to the buildings & property size



**Shot 33:** Ship Store signs from the docks



**Shot 34:** Property Photo showing how NON invasive the existing signs are in ration to the buildings & property size



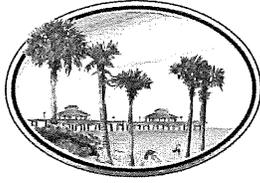
**Shot 35:** Roof Sign "the big M"

**EXHIBIT I**

	Business	Sign Type	Size	Action	Request
Shot 1	Big M Casino	Sandwich Board	n/a	Removed	n/a
Shot 2	Moss Marine	Pole	37		Retain
Shot 3	Moss Marine	Banner	n/a	Removed	
Shot 4	n/a	n/a	n/a	n/a	n/a
Shot 5	Moss Marine	Banner	n/a	Removed	n/a
Shot 6	Moss Marine	Banner	n/a	Removed	n/a
Shot 7	Big M Casino	Wall	16		Retain
Shot 8	Big M Casino	Wall	27.25	Will be Removed	
Shot 9	Big M Casino	Wall	16		Retain
Shot 10	Big M Casino	Awning	7		Retain
Shot 11	Big M Casino	Wall	19.25		Retain
Shot 12	Big M Casino	Directional	1.5		Retain
Shot 13a	Big M Casino	Wall	47.5		Retain
Shot 13b	Big M Casino	Directional	1.5		Retain
Shot 14	Big M Casino	Pole	1.5		Retain
Shot 15a	Big M Casino	Wall	23.75		Retain
Shot 15b	Big M Casino	Directional	1.5		Retain
Shot 15c	Big M Casino	Directional	1		Retain
Shot 16	Big M Casino	Directional	1.5		Retain
Shot 17	Moss Marine	Directional	1.5		Retain
Shot 18a	Moss Marine	Informational	1.5	Required By Insurance	Retain
Shot 18b	Moss Marine	Informational	3	Required By Insurance	Retain
Shot 19	Moss Marine	Informational	1.5	Required By Insurance	Retain
Shot 20a	Moss Marine	Informational	1.5	Required By Insurance	Retain
Shot 20b	Moss Marine	Informational	1.5	Required By Insurance	Retain
Shot 20c	Moss Marine	Informational	3	Required By Insurance	Retain
Shot 21	Big M Casino	Directional	3		Retain
Shot 22	Moss Marine	Informational	1.5	Required By Insurance	Retain
Shot 23a	Moss Marine	Informational	3	Required By Insurance	Retain
Shot 23b	Moss Marine	Informational	3	Required By Insurance	Retain
Shot 24	Moss Marine	Informational	3		Retain
Shot 25	Moss Marine	Informational	1.5		Retain
Shot 26	Moss Marine	Government	5	Required By FWC & DEP	Retain
Shot 27a	Moss Marine	Informational	1.5		Retain
Shot 27b	Moss Marine	Informational	3		Retain
Shot 28a	Moss Marine	Wall	200		Retain
Shot 28b	Moss Marine	Wall	76		Retain

<b>Big M Grand Total</b>	<b>168.25</b>
Big M Commercial Message	128
Big M Directional w/cm	13
Big M Remove	27.25

<b>Moss Marine Grand Total</b>	<b>311</b>
Moss Marine Commercial Message	276
Moss Marine Directional w/cm	1.5
Moss Marine Incidental	28.5
Moss Marine Government	5



***Town of Fort Myers Beach***  
**COMMUNITY DEVELOPMENT DEPARTMENT**  
**STAFF REPORT**

**TYPE OF CASE:** Sign Variance  
**CASE NUMBER:** VAR2011-0007  
**LPA HEARING DATE:** August 14, 2012  
**LPA HEARING TIME:** 9 AM

**I. APPLICATION SUMMARY**

**Applicant:** Emily McDaniel, authorized agent & manager  
Moss Marine - George Freeman, Owner

**Request:** A variance from 30-153(b)(1) maximum allowable sign area and 30-5(18) prohibited signs, roof signs.

**Subject property:** See *Exhibit A*

**Physical Address:** 450 Harbor Court Fort Myers Beach, FL 33931

**STRAP #:** 24-46-23-W3-00027.0000  
24-46-23-W3-00026.0020

**FLU:** Marina

**Zoning:** Commercial Marine (CM)

**Current use(s):** Marina

**Adjacent zoning and land uses:**

North: Matanzas Pass

South: Single and Multifamily Residential  
Residential Conservation (RC)  
Mixed Residential & Platted Overlay

East: Multifamily Residential - Marina Village at Snug Harbor  
Downtown  
Pedestrian Commercial

West: Single and Multifamily Residential  
Residential Conservation (RC)  
Mixed Residential & Platted Overlay

Artificial canal

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

Emily McDaniel, authorized agent and manager of Moss Marine, has applied for a variance from all applicable sign regulations, specifically Sections 30-153(b)(1) and 30-5(18) in Chapter 30 the Town of Fort Myers Beach Land Development Code (LDC) for the property located at 450 Harbor Court and known as Moss Marine or The Big 'M'.

The subject property measures approximately 3± acres in size and contains multiple buildings and warehouses supporting an active marina use. The subject property consists of two separate STRAP parcels with the same street address. One parcel, which was developed in the late 1960's, and contains the ship store and the older warehouse building has the Big 'M' painted on the roof. Letters painted on the exterior of a building for the purpose of advertising a business constitute signage under the Town code. The second parcel was developed in the late 1980's and contains additional warehouse style buildings.

On April 18, 2011 Town Council adopted amendments to the sign ordinance (11-01) which became effective immediately upon adoption. The amendments include an amortization provision requiring all non-conforming signs to come into compliance by December 31, 2011.

Ms. McDaniel applied for a variance from provisions within Ordinance 11-01 on December 30, 2011, one day prior to the compliance deadline of December 31, 2011.

In the sufficiency response, as well as subsequent emails with Staff, the applicant clarified that their request was to keep all existing on-site signage as is, including the sign painted on the roof.

### **Analysis:**

As depicted on *Exhibit B*, *Exhibit C*, and *Exhibit D*, the applicant's existing signage is predominately located on two buildings of the subject property. The majority of the

signs are facing out towards Matanzas Pass because, as the applicant states, there is a need for the signage “to be large enough to be seen from the water.”

The applicant is requesting relief from the maximum allowable sign area requirement, Section 30-1539b(1), and prohibited signs, Section 30-5(18), of Chapter 30 of the LDC, in order to maintain ‘visibility’ to boaters on Matanzas Pass. The applicant is proposing to keep all their existing signage without any modifications. As observed by Staff on site visits on both July 26, 2012 and July 30, 2012, however, the applicant has failed to provide a complete inventory of all signage on the subject property and the amount of square footage for each of the respective signs (See *Exhibit G*). To be clear, *Exhibit D*, an email from the applicant, does list signs and sign areas but Staff, during their site visit, observed additional signs that were not included in that email listing.

The application is brief and details justifying the request, especially specifically addressing the five factors included in 34-87, are sometimes lacking. The applicant states that most of the signage on the subject property is oriented towards Matanzas Pass and their boating customers. This is consistent with what Staff observed on both site visits.

The applicant states that the reason the variance should be granted is that the subject property is a very large parcel of land, 3 ± acres, and the hardship that exists on the subject property is due to the waterfront aspect of their businesses.

Section 30-153(b) establishes the maximum sign face area for commercial establishments and reads as follows:

***Section 30-153(b) Commercial uses in commercial zoning districts.*** All signs located in commercial zoning districts, except for those signs identified as exempt signs in 30-6 and temporary signs in 30-141, shall comply with the following sign area limitations.

*(1) For a parcel of land containing one (1) or two (2) business establishments each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.*

Section 30-2 establishes definitions for Chapter 30 including sign types.

***Sec. 30-2. Definitions and rules of construction.***

*(a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.*

*(b) The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning*

**Roof sign.** Any sign erected upon a roof or roof-mounted equipment. Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

Section 30-5 describes prohibited signs.

**Sec. 30-5. Prohibited signs.** The following signs are prohibited:  
**(18) Roof signs.**

The applicant is requesting a variance to retain the existing on-site wall signage which the applicant estimates to be approximately 408 square feet. (See *Exhibit D*). The applicant is also requesting to retain the roof sign, a prohibited sign type, which they estimate to measure at about 1,500 square feet.

The subject property has two registered business on the subject property which would entitle them to a total of 64 square feet of sign area per Section 30-153(b)(1).

On July 26, 2012 and July 30, 2012 Staff conducted site visits where it was noticed that additional on-site signage was not included in the inventory provided by the applicant. Chapter 30 defines signage as follows:

**Sign.** Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention or convey a message outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.

**Commercial message.** Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. For purposes of this chapter, terms such as sale, special, clearance, or other words which relate to commercial activity shall be deemed to be commercial messages. The identification by name of an apartment or condominium development on a residential sign at the apartment or condominium development site shall not be considered to be a commercial message.

Photos of the additional signs are attached as *Exhibit E*. Staff has determined that the signs depicted in *Exhibit E* could be remain on the subject property and be classified as incidental signage provided they meet the requirements of Section 30-6(7) which states that they cannot exceed 2 square feet in area per sign and are limited to two signs per parcel.

Additionally, during a site visit Staff noticed three sandwich board signs (See *Exhibit F*), which is another prohibited sign type. These signs must be removed; however Staff recommends that the applicant replace the signs with similar, in-ground directional signs as long as they meet the following definition as per Section 30-2:

*Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area and contains no commercial message.*

The applicant makes a valid claim, that the sign ordinance, in some instances, does not adequately address signage for properties that front on waterways and roadways or for properties that are oriented almost completely toward waterways. A variance request, however, for more than six times the allowable sign area when only 64 square feet is permitted is a request that should be considered carefully. Without clear direction from the code, the decision in this case will have the potential for setting a precedent for all waterfront-oriented businesses.

This application is devoid of any discussion as to why the signage that the subject property has on-site is necessary and why, in the applicant's opinion, it cannot be reduced in any respect. At 408± square feet of total sign area, more than 6 times the allowable area, is an extensive variance request, especially when all other properties on the island are subject to a 32 or 64 square foot maximum.

With respect to the prohibited roof sign, the applicant states that the sign has been in place since 1964, and since it's not "flashy and does not obstruct views or disturb neighboring homes or businesses" they wish to keep "The Big M" sign on the roof. It should be noted that the subject property does suffer from considerable site constraints, in as much as it is difficult to find when coming off the Sky Bridge. The large scale of the marina operation could also be considered a factor in assessing whether there is a hardship requiring a roof sign.

Chapter 30 is very clear that roof signs are a prohibited sign type, regardless of its appearance. Back in December, when Staff was initially meeting with the applicant regarding signs on the subject property, Staff suggested that if the applicant felt the roof sign had historic value to Fort Myers Beach, that she could pursue historic designation for the sign. However, as evidenced by the submission of this variance application, the applicant chose to pursue the variance rather than historic designation.

Findings and Conclusions:

Using the five decision making factors described in LDC Section 34-87(3), Staff recommends the following findings and conclusions:

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The applicant, in their narrative, identifies their 3± acre parcel and the waterfront businesses it supports as the 'exceptional or extraordinary

circumstances' inherent on the subject property that keeps them from conforming to the standards set forth in Chapter 30.

Staff does not find that a large parcel or a waterfront business is exceptional or extraordinary, therefore Staff recommends the finding that there **are not** exceptional or extraordinary conditions or circumstances that are inherent and unique to the subject property and that it **does not** justify the variance.

- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The 'Big M' roof sign has been in place since 1964 and Staff was not able to find any permit records as to when the remaining wall signs were installed.

Staff is confident, however, that the conditions stated by the applicant as justification for the variance are not the result of actions taken by the applicant after the adoption of the original sign ordinance in 1999.

Staff finds that the conditions justifying the variance **are not** the results of actions of the applicant taken after the adoption of the regulation in question.

- c. *That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The application does not discuss why the existing wall signs, that total approximately 408 square feet, are the minimum necessary, nor is there much discussion or explanation as to why the roof sign should remain, other than it's been there since 1964. Furthermore, the applicant has not provided a complete inventory and assessment of all signs on the subject property which makes it difficult to assess the degree of variance actually being requested.

Therefore based on limited evidence as to the necessity of the request, Staff finds that the variance requested **is not** the minimum variance necessary to relieve an undue burden.

- d. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The applicant is requesting relief from prohibited sign types and the sign area requirements of Chapter 30 of the LDC, effectively requesting over six times permitted sign area, per 30-153(b)(1).

It is Staff's opinion that there is not a justifiable reason or hardship that exists on the subject property that would permit the granting of a sign area

variance by Town Council. Staff therefore finds that granting the variance **would** be injurious to the neighborhood or otherwise detrimental to the public welfare by allowing the subject property relief from rules and regulations that all others must adhere to.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

With the adoption of the amended sign ordinance, and the consequent amortization period for conformity, numerous locations on the Beach have pursued variance requests from the amended requirements. However, by the very nature of the recent adoption of the sign ordinance Town Council has addressed the issue of signs (including area and prohibited types) and has made a decision to enact and enforce a uniform sign code.

Staff finds that the circumstances of the specific piece of property on which a variance is sought **are** general in nature and therefore do not demonstrate a verifiable hardship.

### **III. RECOMMENDATION**

Staff recommends **DENIAL** of the requested variance based upon the requisite findings and conclusions for granting a variance under LDC Section 34-87.

### **IV. CONCLUSION**

Staff does not feel that the applicant has demonstrated a justifiable or valid reason for Town Council to approve a variance from Chapter 30 of the LDC.

Therefore, Staff recommends **DENIAL** of the requested variance.

#### **Exhibits:**

A – Legal Description

B – Site plan

C – Existing signs

D – Email with sign square footage

E – Additional signs from Staff site visit, July 26, 2012 & July 30, 2013

F – Sandwich board signs observed on site visit, July 26, 2012

G – Images from 7/30/12 observation

**Exhibit A – Legal Description  
Moss Marine**

Parcel 1:

Lot 21, Block B, of that certain subdivision known as MATANZAS VIEW, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 9, Page 40.

Parcel 2:

A tract or parcel of land located in Government Lot 1, Section 24, Township 46 South, Range 23 East, on Estero Island, Lee County, Florida, which tract or parcel of land is more particularly described as follows:

From the northwesterly corner of Block 3 of BUSINESS CENTER, a subdivision according to the map or plat recorded in Plat Book 9 at pages 9 and 10 of the public records of Lee County, run northwesterly along a prolongation of the northeasterly line of said Block 3 for 66 feet to the westerly right-of-way line of the County Road; thence continue on the same course, along the southwesterly line of a road 50 feet wide, for 550 feet; thence deflect 90°00' right and run northeasterly, parallel to the aforesaid County Road, along the northwesterly line of said road 50 feet wide for 320 feet to the point of beginning of the lands hereby described. From said point of beginning, run northwesterly along a line perpendicular to the aforesaid County Road for 100 feet; thence run northeasterly parallel to said road to Matanzas Pass; thence run southeasterly along said Pass to an intersection with a line through the point of beginning parallel to said County Road; thence run southwesterly along said parallel line and the northwesterly line of a road 50 feet wide for 150 feet, more or less, to the point of beginning.

Parcel 3:

A tract or parcel of land located in Government Lot 1, Section 24, Township 46 South, Range 23 East, on Estero Island in Lee County, Florida, which tract or parcel of land is more particularly described as follows:

From the northwesterly corner of Block 3 of BUSINESS CENTER, a subdivision according to the map or plat recorded in Plat Book 9 at pages 9 and 10 of the public records of Lee County, run northwesterly along a prolongation of the northeasterly line of said Block 3 for 66 feet to the westerly right-of-way line of the County Road; thence continue on the same course, along the southwesterly line of a road 50 feet wide, for 550 feet; thence deflect 90°00' right and run northeasterly, parallel to the aforesaid County Road, along the northwesterly line of said road 50 feet wide for 320 feet to the point of beginning of the lands hereby described. From said point of beginning run southeasterly along a line perpendicular to the aforesaid County Road, for 153 feet; thence run northeasterly, parallel to and 430 feet from the center line of said County Road, for 172 feet, more or less, to the waters of Matanzas Pass; thence run northwesterly along said waters to an intersection with a line through the point of beginning parallel to said County Road; thence run southwesterly along said line for 150 feet, more or less, to the point of beginning.

Parcel 4:

A parcel of submerged land in Matanzas Pass in Section 24, Township 46 South, Range 23 East, Lee County, Florida, being more particularly described as follows:

From the Southwesterly corner of Lot 21, Block B, MATANZAS VIEW SUBDIVION, according to the map or plat recorded in Plat Book 9 at page 40, of the Public Records of Lee County, Florida, run North 26°03'00" East along the Northwesterly line of said lot and the Southwesterly line of a dedicated canal right-of-way for 55 feet to the point of beginning of the lands herein described. Said point of beginning being also the point of beginning of the bulkhead line approved by the Trustees of Internal Improvement Fund on July 18, 1967. From said point of beginning run along said bulkhead like Northeasterly, Easterly, and Southeasterly along the arc of a curve to the right of radius 75 feet (chord bearing 71°03'00" East) for 117.81 feet to the point of reverse curvature; thence run Southeasterly, Easterly, and Northeasterly along the arc of a curve to the left of radius 200 feet (chord bearing South 79°50'40" East) for 110.96 feet to a point of reverse curvature; thence run Northeasterly and Easterly along the arc of a curve to the right of radius 200 feet (Chord bearing South 79°50'40" East for 110.96 feet to a point of tangency; thence run South 63°57'00" East for 126.19 feet to a point of curvature; thence run Southeasterly and Easterly along the arc of a curve to the left of radius 50 feet (chord bearing South 82°23'10" East) for 32.17 feet to an intersection with a Northeasterly prolongation of the Southeasterly line of Lot 12, Block A of said Matanzas View; thence run South 26°03'00" West along said prolongation for 35 feet, more or less, to the mean high tide line on the South shore of Matanzas Pass; thence run Northwesterly, Northerly, Northwesterly, Southwesterly, and Northwesterly and Southwesterly along said mean high tide line to the point of beginning.

Parcel 5: (24-46-23-W3-00026.0020)

Part of Government Lot 1 in Section 24, Township 46 South, Range 23 East, further bounded and described as follows:

Starting at a concrete monument in the northwesterly line of San Carlos Boulevard, 30 feet from the center thereof and being the same monument that is shown 3 feet southeast from the most southeasterly corner of the MATANZAS VIEW SUBDIVISION as recorded in Plat Book 9, Page 40; thence North 65°W a distance of 200.00 feet to a point and the principal place of beginning; thence continuing N 65°W a distance of 200.00 feet; thence N 25°E parallel to San Carlos Blvd. a distance of 390.00 feet; thence by a curve deflecting to the right a distance of 37.06 feet, said curve having a radius of 67.22 feet and a chord that bears S 86°04'38" E a distance of 36.59 feet; thence S 70°17'05" E a distance of 166.58 feet; thence S 25°W a distance of 418.50 feet to the place of beginning.

ALSO Easement No. 1: Starting at the same monument that is the starting point of the above description; thence N 25° E a distance of 285.00 feet to a point and the principal place of beginning; thence continuing N 25° E a distance of 30.00 feet; thence N 65° W a distance of 200.00 feet; thence S 25° W a distance of 30.00 feet; thence S 65° E a distance of 200.00 feet to the point of beginning.

ALSO Easement No. 2: A 12.00 foot wide strip of land running between the above described property and San Carlos Boulevard and lying within the confines of the following described land: Beginning at the same monument that is the starting point of the above property; thence N 65°W a distance of 200.00 feet; thence N 25°E a distance of 32.00 feet; thence S 65°E a distance of 200.00 feet; thence S 25° W a distance of 32.00 feet to the place of beginning.

= property line

= Buildings

= Signs

EXHIBIT D

NOTES:  
SURVEY PREPARED FOR THE SPECIFIC PURPOSE OF A SUBMERGED LAND LEASE APPLICATION.

SURVEY BASED ON THE PLAT OF MATANZAS NEW RECORDED DEEDS AND FOUND MONUMENTATION.

BEARINGS BASED ON THE U.S. ARMY CORP. OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1963 WITH THE CENTERLINE OF THE CHANNEL AS BEARINGS N72°04'47\"/>

ELEVATIONS BASED ON N.A.S.D. OF 1988 AND U.S.C.G.S. BENCHMARK IN NO. 2 1985.

HOW ROADS "JCT" ARE 5/8" X 1/8" KEYS WITH YELLOW CAP BEARING CORPORATION NO. 4919.

UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO LOCATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

STATE PLANE COORDINATES LABELED (27) ARE FLORIDA WEST ZONE-1827 DATUM BASED ON THE U.S. ARMY CORPS OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1963 AND COORDINATES LABELED (83/97) ARE BASED ON SURVEY-ORIGIN U.P. & OBSERVATIONS BASED ON FLORIDA WEST ZONE (N.A.S.D. 1983/2007 ADJUSTMENT) HOLDINGS CONTROL POINT 3-08-44-22 GPS 90061.

THE MEAN HIGH WATER ELEVATION AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION (61.4 NAVD 1988) AT MEAN HIGH WATER INTERPOLATION POINT 872-5385 PER DEP PROCEDURAL APPROVAL DATED JUNE 29, 2011.

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPIARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

SURVEY MEETS OR EXCEEDS ACCURACY STANDARDS OF 1:15,000.

DATE OF LAST FIELD WORK 7-26-11 (SURVEY DATE).

# SPECIFIC PURPOSE SURVEY FOR SUBMERGED LAND LEASE OF A PARCEL OF SUBMERGED LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

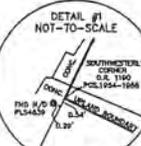
Curve number 1	Curve number 2	Curve number 3	Curve number 4	Curve number 5
Radius= 75.00 Delta= 90°00'00" Arc= 177.81 Tangent= 75.00 Chord= 105.67 Chord Brg. N.71°05'15"E	Radius= 200.00 Delta= 37°47'16" Arc= 110.86 Tangent= 56.95 Chord= 109.54 Chord Brg. N.78°48'23"E	Radius= 200.00 Delta= 37°47'16" Arc= 110.86 Tangent= 56.95 Chord= 109.54 Chord Brg. N.83°08'32"E	Radius= 50.00 Delta= 302°45' Arc= 33.56 Tangent= 17.44 Chord= 32.57 Chord Brg. N.43°08'32"E	Radius= 75.00 Delta= 105°45' Arc= 14.23 Tangent= 7.17 Chord= 14.27 Chord Brg. N.31°32'47"E

SURVEY CONTROL BASIS:  
FMBBH 18 X=51250.07' Y=772523.06'  
FMBBH 24 X=51059.11' Y=771555.40'  
(U.S. ARMY CORP. OF ENGINEERS S.G. FILE NO. 87-3630 DATED APRIL 1963)

VERTICAL DATUM DIAGRAM

61.4'	MEAN HIGH WATER (MHW) +61.4'
61.4'	N.A.S.D. OF 1988
60.9'	MEAN LOW WATER (MLW) -60.9'

SHORELINE CONDITIONS:  
+0'-100' NORTHWEST OF LEASE PARCEL:  
CONCRETE SEAWALL & DOCK.  
+758' = TOTAL LEASE AREA SHORELINE PER DESCRIPTION  
+0'-100' SOUTHEAST OF LEASE PARCEL:  
CONCRETE SEAWALL & DOCK.



- LEGEND
- (P) = PLAT
  - (M) = MEASURED
  - (V) = FIELD MEASURED & VERIFIED
  - (D) = DEED
  - (R) = RADIAL
  - (NR) = NON RADIAL
  - PC = POINT OF CURVE
  - PT = POINT OF TANGENCY
  - PIVC = POINT OF REVERSE CURVE
  - FND = FOUND
  - P.B. = PLAT BOOK
  - PL = PAGE
  - C.M. = CONCRETE MONUMENT
  - I.D. = IDENTIFICATION
  - D.H. = DRILL HOLE
  - LI = IRON NAIL
  - FND. = FOUND
  - U.E. = UTILITY EASEMENT
  - R/W = RIGHT-OF-WAY
  - (C) = CALCULATED
  - Q/H = OVER HEAD LINES
  - N/D = NAIL & DISK
  - W = WATER METER
  - F = FIRE HYDRANT
  - U = UNITED TELEPHONE SERVICE BOX
  - ⊙ = SEWER MANHOLE
  - ⊖ = PILING
  - ⊓ = CATCH BASIN
  - T.W. = TOP OF SEAWALL
  - B.W. = BOTTOM OF SEAWALL
  - SF = SQUARE FEET
  - LF = LINEAR FEET
  - POB = POINT OF BEGINNING
  - B.E. = BOTTOM ELEVATION

PARCEL AREAS:

EXISTING LEASE AREA=	20,778 S.F.	0.48 AC.
LEASE AREA #1=	14,142 S.F.	0.32 AC.
LEASE AREA #2=	1,328 S.F.	0.03 AC.
LEASE AREA #3=	1,468 S.F.	0.03 AC.
LEASE AREA #4=	21,351 S.F.	0.49 AC.
LEASE AREA #5=	53,345 S.F.	1.22 AC.
LEASE AREA #6=	60 S.F.	0.001 AC.
TOTAL AREA=	112,400 S.F.	2.58 AC.

Bean, Whitaker, Lutz & Kareh, Inc. (28 4819)  
CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
1304 MCCOY ROAD, FORT MYERS, FLORIDA 33916-0400 (239) 481-1331

DATE: 7-28-11 PROJECT NO: 30573 DRAWN BY: SCW SCALE: 1" = 30' SHEET: 1 OF 5 FILE NO: D-1-4-0 24-48-23



Ship Store signs from Bay (1)  
IMG\_1315



Ship Store signs from Bay (2)  
IMG\_1316



Sign view from Harbor Ct.  
IMG\_1317



Barn Signs from Bay  
IMG\_1318



airiel (1)

TaxMapImage.aspx



airiel (2)

TaxMapImage-1.aspx

Exhibit C



Roof Sign  
photo.aspx

Exhibit D

**Leslee Chapman**

---

**From:** emcd1040@aol.com  
**Sent:** Thursday, July 19, 2012 12:22 PM  
**To:** Leslee Chapman  
**Subject:** Re: Moss Marine/Big M sign variance

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Sorry Leslee, when it rains it pours! Our systems got struck by lightning & we had to spend most of yesterday getting things back up & running..... still working on a couple of gas pumps today!

Here are the sign measurements, there was a problem with the roof sign, we have no way to get up there to measure it.... I have looked through old records for anything that may reference the size & have not found anything, so we estimated, based on the size of the building & roof.

Signs 1-4 are located on the ship store

- Sign #1 - SHIP STORE is 16 sq ft (bay side)
- Sign #2 - MOSS MARINE is 27.28 sq ft (bay side)
- Sign #3 - BOATERS LOUNGE is 16 sq ft (bay side)
- Sign #4 - THE BIG M is 47.58 sq ft (big cut our "M" facing Harbor Ct)

16  
27.28  
16  
47.58  
277  
23.85

Signs 5, 6 & 7 are on our A/B barn

- Sign #1 - MOSS MARINE is 277 sq ft (Large individual letters on bay side)
- Sign #2 - THE BIG M is 23.853 sq ft (big cut our "M" facing Bonita Rd)
- Sign #3 - THE BIG M ROOF SIGN - not exact, but we estimate about 1500 sq ft.

407.71  
408 sq ft of wall signa  
roof signage

Remember we have 3 acres of property, which is 130,680 sq ft. so again, we are not a 30 ft store front.....

Sorry about the delay!

EMILY MCDANIEL  
Moss Marine

-----Original Message-----

From: Leslee Chapman <leslee@fortmyersbeachfl.gov>  
To: Emily <emcd1040@aol.com>  
Sent: Thu, Jul 19, 2012 10:49 am  
Subject: RE: Moss Marine/Big M sign variance

EXHIBIT E

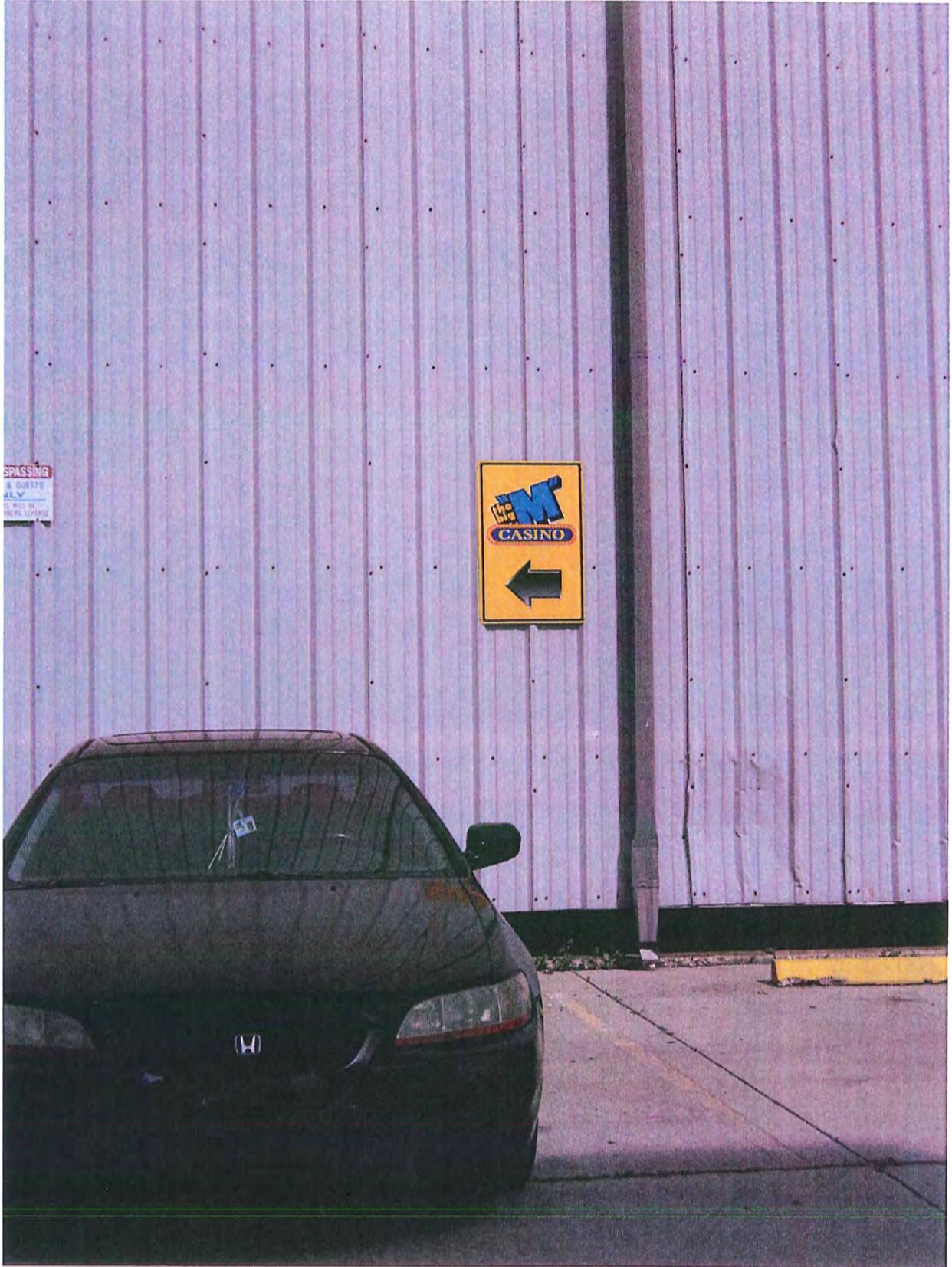




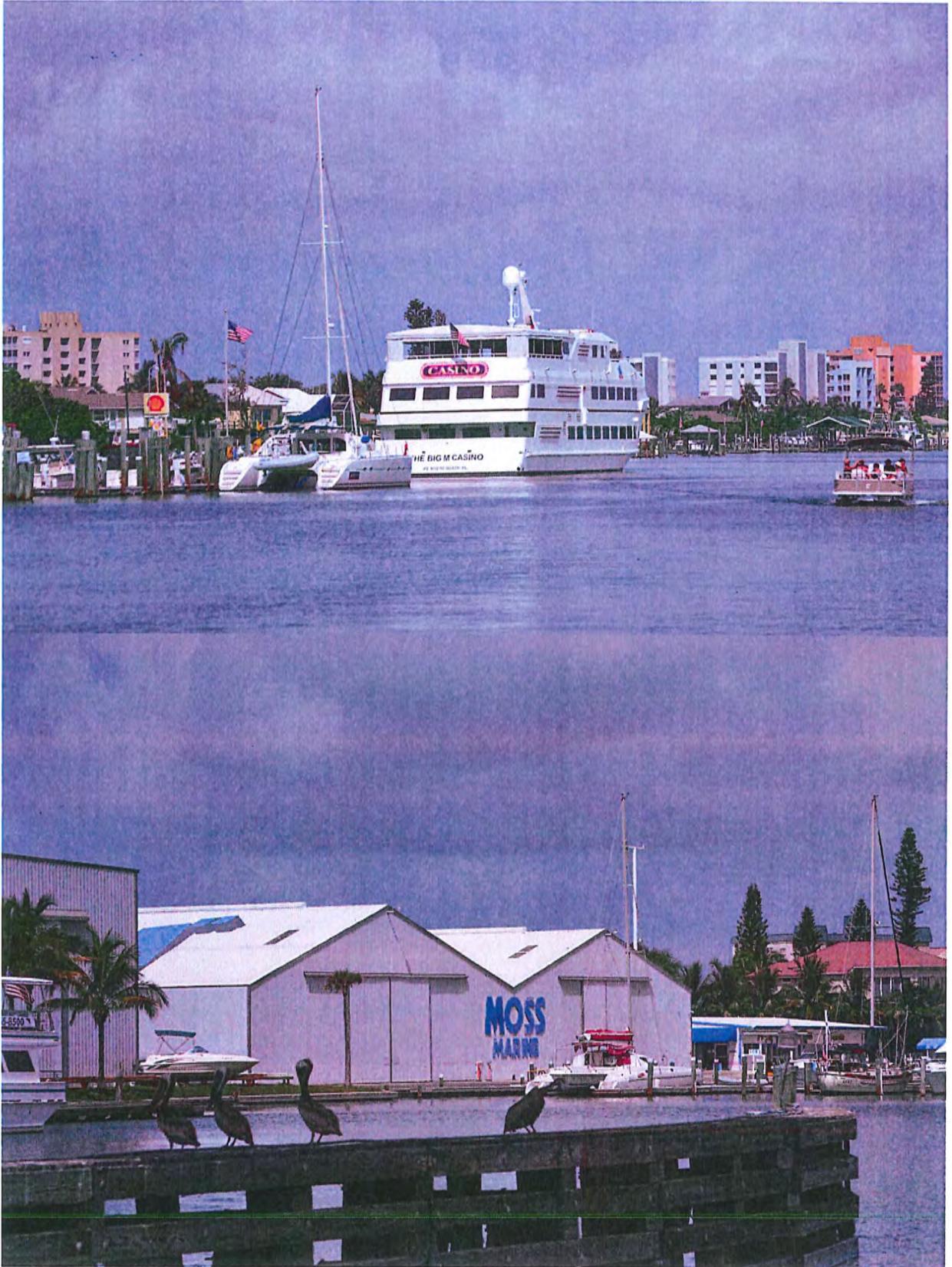




EXHIBIT F

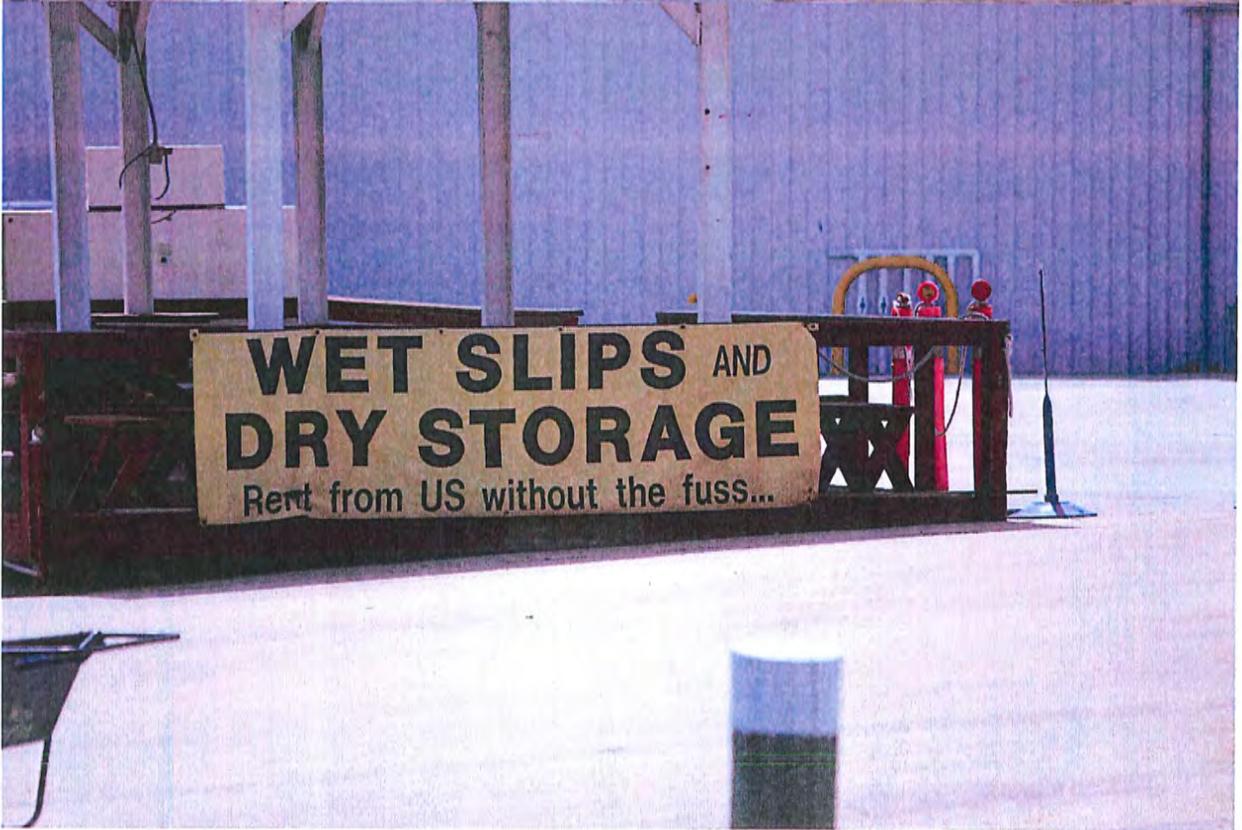


EXHIBIT 4



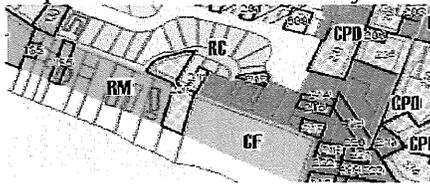




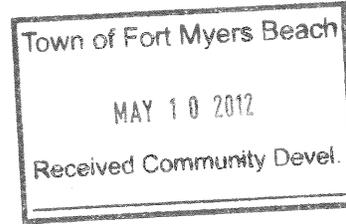




**Town of Fort Myers Beach**  
 Department of Community Development



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.

<b>Project Name:</b>	Moss Marine
<b>Authorized Applicant:</b>	
<b>LeePA STRAP Number(s):</b>	24-46-23-W3-00027.0000
	24-46-23-W3-00026.0020

<b>Current Property Status:</b>	Marina
<b>Current Zoning:</b>	Warehousing / PIER
<b>Future Land Use Map (FLUM) Category:</b>	
<b>Platted Overlay? <u>  </u>yes <u>  </u>no</b>	<b>FLUM Density Range:</b>

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input checked="" type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
 Department of Community Development  
 2523 Estero Boulevard  
 Fort Myers Beach, FL 33931  
 (239) 765-0202

**PART I – General Information**

**A. Applicant:**

Name(s):	George Freeland		
Address: Street:	450 Harbor Ct		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Phone:	239-765-6677		
Fax:	239-765-6112		
E-mail address:	info @ MOSS MARINE .COM		

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

<input checked="" 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:	Emily McDaniel		
Mailing address: Street:	450 Harbor Ct		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Contact Person:	Emily McDaniel		
Phone:	239-253-1026	Fax:	239-765-6112
E-mail address:	EMCD1040 @ AOL.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.

**PART II – Nature of Request**

**Requested Action (check applicable actions):**

<input type="checkbox"/> Special Exception for:
<input checked="" type="checkbox"/> Variance for: <u>Signage existing on property</u>
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain): _____

**PART III – Waivers**

**Waivers from application submittal requirements:** Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director’s approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

**PART IV – Property Ownership**

<input checked="" type="checkbox"/> <b>Single owner</b> (individual or husband and wife)	
Name:	<u>George Freeland</u>
Address: Street:	<u>4830 Griffin Blvd</u>
City:	<u>Ft Myers</u> State: <u>FL</u> Zip Code: <u>33908</u>
Phone:	<u>239-765-6677</u> Fax: <u>239-765-6112</u>
E-mail Address:	

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

**PART V – Property Information**

**A. Legal Description of Subject Property**

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name:
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.
--

**C. STRAP Number(s):**

24-46-23-W3-00027.0000
------------------------

**D Property Dimensions:**

Area:	square feet	acres
Width along roadway:	feet	Depth: feet

**E. Property Street Address:**

450 Harbor Ct Ft Myers Beach 33931
------------------------------------

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

If you are headed on to the island, when you get to the top of the Sky bridge look right, you will see "the BIG M"

Attach Area Location Map as Exhibit 5-3

**G. Property Restrictions (check applicable):**

- There are no deed restrictions or covenants on this property that affect this request.
- Restrictions and/or covenants are attached as Exhibit 5-4
- 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 checked="" type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential     | <input type="checkbox"/> Recreation        |
| <input type="checkbox"/> Boulevard             | <input type="checkbox"/> Wetlands          |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Tidal Water       |
- Is the property located within the "Platted Overlay" area on the Future Land Use Map?     Yes         No

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

- |   |  |
|---|--|
| <input type="checkbox"/> RS (Residential Single-family) | <input checked="" 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 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, Emily McDaniel, 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.

*Emily McDaniel*  
Signature

Emily McDaniel  
Typed or Printed Name

State of Fl  
County of Lee

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

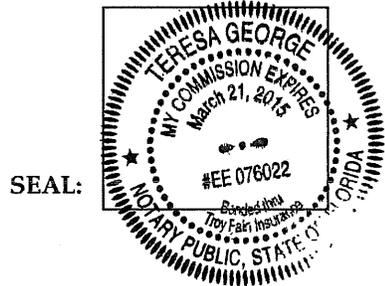
before me this 12/30/11 by Emily McDaniel  
(date) (name of person under oath or affirmation)

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

as identification.

*Teresa George*  
Signature of person administering oath

Teresa George  
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, Emily McDaniel, as Manager  
of Moss Marine, 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

Moss Marine  
Name of Entity (corporation, LLC, partnership, etc)  
Manager  
Title of Signatory

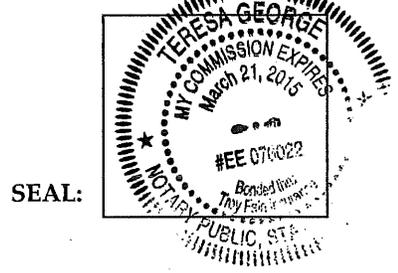
Emily McDaniel  
Signature  
Emily McDaniel  
Typed or Printed Name

State of FL  
County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed  
before me this 12/30/11 by Emily McDaniel  
Date Name of person under oath or affirmation  
who is personally known to me or who has produced \_\_\_\_\_  
Type of identification

as identification.  
Teresa George  
Signature of person administering oath

Teresa George  
Typed or Printed Name



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

**STRAP#** 24-46-23-00027.0000

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
George Freeland 4830 Griffin Blvd Ft Myers FL 33908	100%

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

Name, Address, and office	Percentage

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

**STRAP#** 24-46-23-000210.0020

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
George Freeland 4830 Griffin Blvd Ft Myers Fl 33908	100%

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

Name, Address, and office	Percentage

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

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

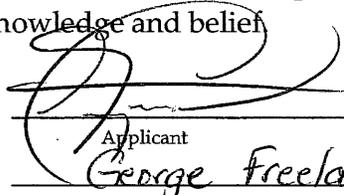
6. If any contingency clause or contract terms involve additional parties, list all individuals, or officers if a corporation, partnership, or trust.

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  
George Freeland  
Printed or typed name of applicant

STATE OF FL  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 19 day of Feb, 2012, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (or did not) take an oath.

Teresa George  
\_\_\_\_\_  
Signature of Notary

Teresa George  
\_\_\_\_\_  
Typed or Printed Name of Notary

SEAL:



# VARIANCE REPORT

5/1/2012

Subject Parcels : 2 Affected Parcels : 133 Buffer Distance : 500 ft



24-46-23-W3-00026.0020 et al.

390 195 0 390 Feet

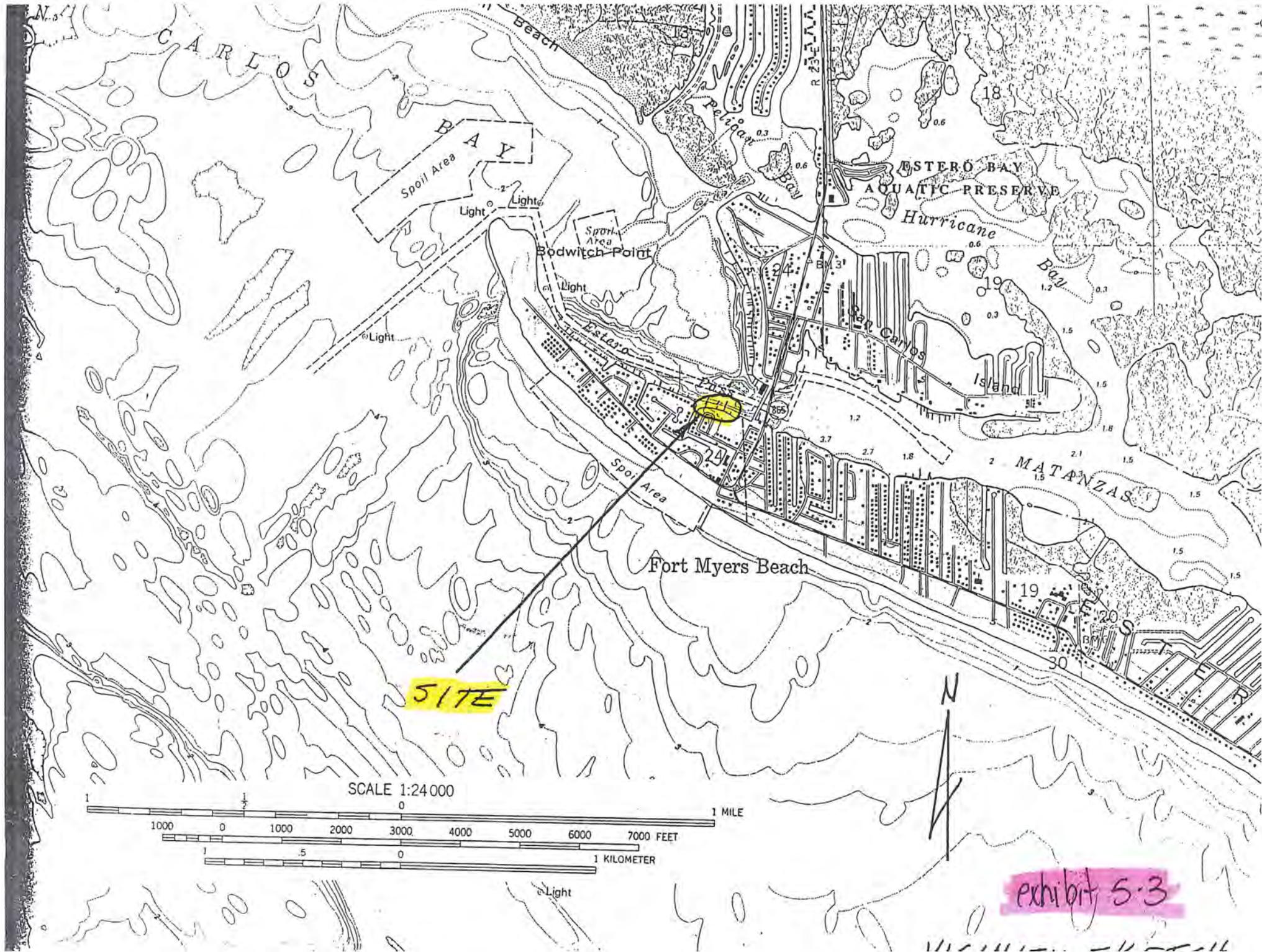


exhibit 5-3

= property line

= Buildings

= Signs

**NOTES:**  
 SURVEY PREPARED FOR THE SPECIFIC PURPOSE OF A SUBMERGED LAND LEASE APPLICATION.  
 SURVEY BASED ON THE PLAN OF MATANZAS MEW RECORDED DEED AND FOUND INFORMATION.  
 BEARINGS BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1993 WITH THE CENTERLINE OF THE CHANNEL AS BEARING N72°00'47"W.  
 ELEVATIONS BASED ON M.A.S.D. OF 1988 AND U.S.G.S. BENCHMARK BM NO. 21885.  
 HIGH RIDES "SET" ARE 5/2" X 1/4" REBAR WITH YELLOW CAP BEARING CORPORATION NO. 4995.  
 UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.  
 THIS PLAN PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO EXCEED THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.  
 PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).  
 STATE PLANE COORDINATES LABELED (27) ARE FLORIDA WEST ZONE-1927 DATUM BASED ON THE U.S. ARMY CORP OF ENGINEERS MATANZAS PASS SURVEY DATED APRIL 1993 AND COORDINATES LABELED (83/707) ARE BASED ON SURVEY-ORANGE C.T.S. COORDINATES BASED ON FLORIDA WEST ZONE (N.A.D. 1983/2007 ADJUSTMENT) HOLDING CONTROL POINT 3-06-44-23 9056.  
 THE MEAN HIGH WATER ELEVATION AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION (8.14' NAVD 1988) AT MEAN HIGH WATER REDUPLICATION POINT 872-3368 PER DEP PROCEDURAL APPROVAL DATED JUNE 28, 2011.  
 THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FLOOD-IN LANDS, IF ANY.  
 SURVEY MEETS OR EXCEEDS ACCURACY STANDARDS OF 1:15,000.  
 DATE OF LAST FIELD WORK 7-28-11 (SURVEY DATE).

# SPECIFIC PURPOSE SURVEY FOR SUBMERGED LAND LEASE OF A PARCEL OF SUBMERGED LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

Curve number 1	Curve number 2	Curve number 3	Curve number 4	Curve number 5
Radius= 75.00 Delta= 90°00'00" Arc= 117.81 Tangent= 75.00 Chord= 106.07 Chord Brg. N71°02'15"E	Radius= 200.00 Delta= 31°47'18" Arc= 110.89 Tangent= 56.95 Chord= 109.54 Chord Brg. N74°48'23"E	Radius= 200.00 Delta= 31°47'18" Arc= 110.89 Tangent= 56.95 Chord= 109.54 Chord Brg. S74°48'23"E	Radius= 50.00 Delta= 32°27'45" Arc= 53.56 Tangent= 37.44 Chord= 33.94 Chord Brg. N43°00'36"W	Radius= 75.00 Delta= 103°45'2" Arc= 14.29 Tangent= 7.17 Chord= 14.27 Chord Brg. N31°32'41"E

**SURVEY CONTROL BASIS:**  
 FURBH 18 X=511250.00' Y=773523.00'  
 FURBH 24 X=519059.11' Y=771555.40'  
 (U.S. ARMY CORP. OF ENGINEERS D.O. FILE NO. 87-38365 DATED APRIL 1993)

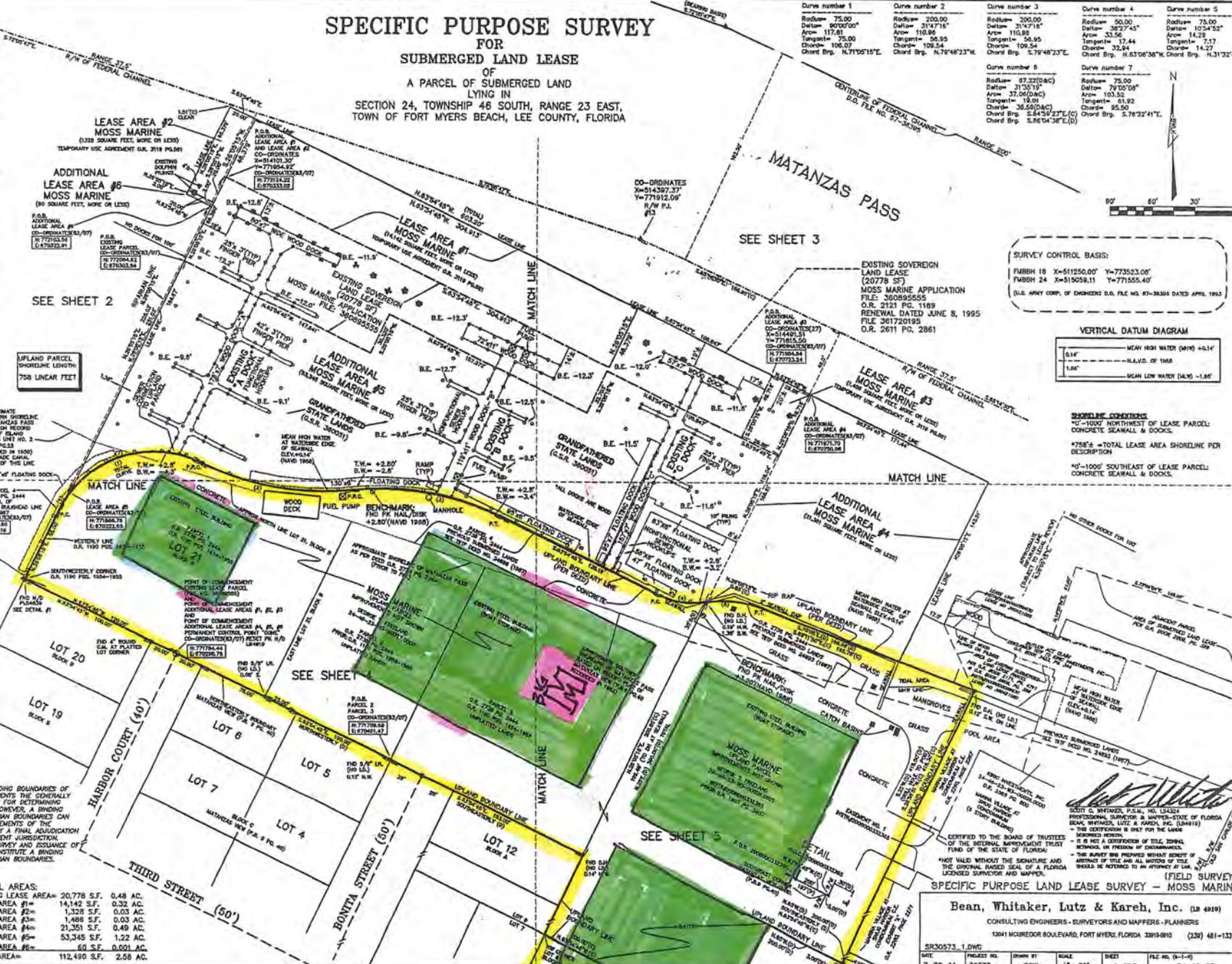
**VERTICAL DATUM DIAGRAM**

8.14'	MEAN HIGH WATER (MHW) +8.14'
0.00'	M.A.S.D. OF 1988
1.66'	MEAN LOW WATER (MLW) -1.66'

**BOUNDARY CONDITIONS:**  
 \*0°-100' NORTHWEST OF LEASE PARCEL: CONCRETE SEAWALL & DOCKS.  
 \*750'S = TOTAL LEASE AREA SHORELINE PER DESCRIPTION.  
 \*0°-100' SOUTHEAST OF LEASE PARCEL: CONCRETE SEAWALL & DOCKS.



- LEGEND**
- (P) = PLAT
  - (M) = MEASURED
  - (V) = FIELD MEASURED & VERIFIED
  - (D) = DEED
  - (R) = RADIAL
  - (HR) = HIGH RADIAL
  - PC = POINT OF CURVE
  - PT = POINT OF TANGENCY
  - PIC = POINT OF INTERSECTION
  - FND = FOUND
  - P.B. = PLAT BOOK
  - PG. = PAGE
  - C.M. = CONCRETE MONUMENT
  - ID = IDENTIFICATION
  - D.H. = DRILL HOLE
  - R.F. = IRON ROD
  - FND. = FOUND
  - U.E. = UTILITY EASEMENT
  - R/W = RIGHT-OF-WAY
  - CALC. = CALCULATOR
  - O/H = OVER HEAD LINES
  - H/D = HAIL & DIRT
  - W.M. = WATER METER
  - F.H. = FIRE HYDRANT
  - U.T.S.B. = UNITED TELEPHONE SERVICE BOX
  - PILING = PILING
  - C.B. = CATCH BASIN
  - T.W. = TOP OF SEAWALL
  - B.W. = BOTTOM OF SEAWALL
  - SF = SQUARE FEET
  - LF = LINEAR FEET
  - POB = POINT OF BEGINNING
  - B.E. = BOTTOM ELEVATION
- SPECIAL NOTE:**  
 THE INFORMATION REGARDING BOUNDARIES OF RIPARIAN RIGHTS REPRESENTS THE GENERALLY ACCEPTED METHODOLOGY FOR ESTABLISHING SUCH RIPARIAN LINES. HOWEVER, A BINDING DETERMINATION OF RIPARIAN BOUNDARIES CAN ONLY BE MADE BY AGREEMENTS OF THE AFFECTED PARTIES OR BY A FINAL ADJUDICATION OF A COURT OF COMPETENT JURISDICTION. ACCEPTANCE OF THIS SURVEY AND ISSUANCE OF A PLAT DOES NOT CONSTITUTE A BINDING DETERMINATION OF RIPARIAN BOUNDARIES.
- PARCEL AREAS:**  
 EXISTING LEASE AREA# = 20,776 S.F., 0.48 AC.  
 LEASE AREA #1 = 14,142 S.F., 0.32 AC.  
 LEASE AREA #2 = 1,328 S.F., 0.03 AC.  
 LEASE AREA #3 = 1,486 S.F., 0.03 AC.  
 LEASE AREA #4 = 21,351 S.F., 0.49 AC.  
 LEASE AREA #5 = 53,345 S.F., 1.22 AC.  
 LEASE AREA #6 = 60 S.F., 0.001 AC.  
**TOTAL AREA# = 112,490 S.F., 2.58 AC.**



**Bean, Whitaker, Lutz & Karch, Inc.** (LA 4919)  
 CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS  
 13041 MOBREDOR BOULEVARD, FORT MYERS, FLORIDA 33909-0010 (239) 481-1133

SR05073.1.DWG  
 DATE: 7-28-11  
 DRAWN BY: SCW  
 SCALE: 1" = 30'  
 SHEET: 24 OF 23  
 FILE NO.: 87-48-23





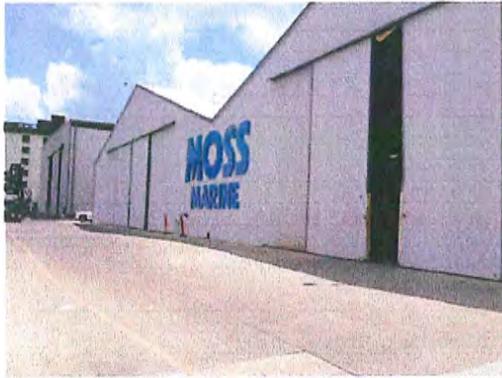
Ship Store signs from Bay (1)  
IMG\_1315



Ship Store signs from Bay (2)  
IMG\_1316



Sign view from Harbor Ct.  
IMG\_1317



Barn Signs from Bay  
IMG\_1318



airiel (1)

TaxMapImage.aspx



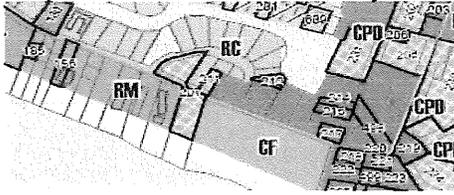
airiel (2)

TaxMapImage-1.aspx



Roof Sign  
photo.aspx

**Town of Fort Myers Beach**  
 Department of Community Development



Zoning Division

TOWN OF  
 FORT MYERS BEACH

MAY 10 2012

RECEIVED BY

**Supplement PH-B**

**Additional Required Information for a  
 Variance Application**

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

Case Number: <i>FMBVAR 2011-0007</i>	
Project Name: <i>Mass Marine</i>	
Authorized Applicant: <i>George Freeland / Emily McDaniel</i>	
LeePA STRAP Number: <i>24-46-23-W3-00026-0020</i> <i>24-46-23-W3-00027-0000</i>	
Current Property Status: <i>Marina</i>	
Current Zoning: <i>CM</i>	
Future Land Use Map (FLUM) Category:	
Comp Plan Density:	Platted Overlay? <input type="checkbox"/> Yes <input type="checkbox"/> No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
<i>Chapter 3D</i>	<i>Signs</i>

Complete the narrative statements below for EACH variance requested.



**Explain the possible effect the variance, if granted, would have on surrounding properties:**

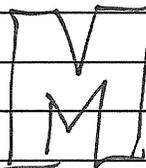
We are a very large parcel located on the Bay at the end of the road so surrounding neighbors do not even see most of our signage.

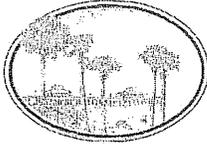
**Explain the hardship (what is unique about the property) that justifies relief from the regulation:**

Again because of the size of our property, nature of our business and historical value of the signage, We feel we qualify for this variance & feel our signage is appropriate

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

Moss Marine AKA "The BIG M" has been in business on FMB since 1964 and our existing signage is adequate and size appropriate for what it is intended. Our signage is not overused, flashy and does not obstruct views or disturb neighboring homes and/or business. Many have commented to us about this issue & can't imagine driving over the Matanzas bridge and not seeing

" the  
big  "



## *Town of Fort Myers Beach*

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

March 14, 2011

Emily McDaniel  
450 Harbor Court  
Fort Myers Beach, FL33919

**Re: FMBVAR2011-0007**

Dear: Ms. McDaniel,

The Community Development Department has reviewed the information provided for the above zoning application. The Town of Fort Myers Beach Land Development Code (LDC) required additional information for the application to be found sufficient. Please respond to each requirement not satisfied on the attached sufficiency checklists. For your assistance, we have enclosed any additional memoranda from the various other Town reviewing departments. In addition, the Town has not received the associated fee of \$2000 for a variance application request.

If you do not provide the requested supplements, corrections and fees within 60 calendar days of this letter, the LDC requires that this application be considered withdrawn, and Code Enforcement will be required to issue a notice of violation for the signage on the subject property. Please feel free to contact me if you have any questions or require further clarification.

Sincerely,

Leslee Chapman  
*Zoning Coordinator*  
Town of Fort Myers Beach  
Community Development

# *Town of Fort Myers Beach*

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

## ZONING REVIEW – Leslee Chapman

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

### ***Application for Public Hearing***

#### *PART V Property Information (Page 4 of 14 of the Public Hearing Application)*

##### *A. Legal Description of Subject Property*

Please provide the subdivision name, Plat book number, page, unit, block and lot.

##### *B. Boundary Survey*

Please provide a boundary survey as requested in the application.

##### *D. Property Dimensions*

Please provide the property dimensions as requested in the application.

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

Please provide a general location of property and provide a general location map as Exhibit 5-3.

##### *H. Surrounding Property Owners*

Please provide a list of surrounding property owners are requested in the application. This information can be requested from the Lee County Property Appraiser at 239-533-6100.

### ***Supplement PH-B***

#### *Additional Required Information for a Variance Application*

*Variance is requested from: \_\_\_\_\_ LDC Section Number and Title of Section or Subsection.*

Please provide a specific list of the exact Chapter 30 section(s) from which the variance is being requested.

#### *PART 1 – Narrative Statements*

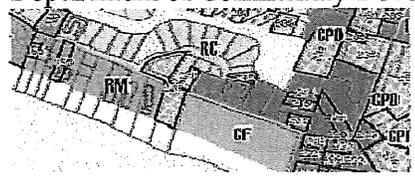
*Request for variance from \_\_\_\_\_ LDC Section Number. Explain the specific regulation contained in this section from which relief is sought.*

Please provide a specific list of the exact Chapter 30 section(s) from which the variance is being requested.

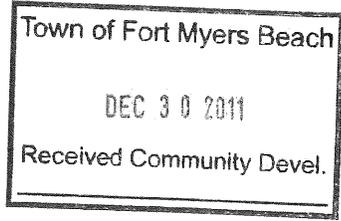
Case # FMBVAP 2011-0007  
 Planner le

Date Received 12/30/11  
 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:	<u>Moss Marine</u>
Authorized Applicant:	
LeePA STRAP Number(s):	<u>24-46-23-W3-00027.0000</u>
	<u>24-46-23-W3-00026.0020</u>

Current Property Status:	<u>Marina</u>
Current Zoning:	<u>Warehousing / PIER</u>
Future Land Use Map (FLUM) Category:	
Platted Overlay? <u>yes</u> <u>no</u>	FLUM Density Range:

Action Requested	Additional Form Required
<input type="checkbox"/> Special Exception	Form PH-A
<input checked="" type="checkbox"/> Variance	Form PH-B
<input type="checkbox"/> Conventional Rezoning	Form PH-C
<input type="checkbox"/> Planned Development	Form PH-D
<input type="checkbox"/> Master Concept Plan Extension	Form PH-E
<input type="checkbox"/> Appeal of Administrative Action	Form PH-F
<input type="checkbox"/> Development of Regional Impact	Schedule Appointment
<input type="checkbox"/> Other (cite LDC section number: _____)	Attach Explanation

**Town of Fort Myers Beach**  
**Department of Community Development**  
 2523 Estero Boulevard  
 Fort Myers Beach, FL 33931  
 (239) 765-0202

**PART I - General Information**

**A. Applicant:**

Name(s):	George Freeland		
Address: Street:	450 Harbor Ct		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Phone:	239-765-6677		
Fax:	239-765-6112		
E-mail address:	info @ MOSS MARINE .COM		

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

<input checked="" 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 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:	Emily McDaniel		
Mailing address: Street:	450 Harbor Ct		
City:	Fort Myers Beach	State:	FL Zip Code: 33931
Contact Person:	Emily McDaniel		
Phone:	239-253-1026	Fax:	239-765-6112
E-mail address:	EMCD1040 @ AOL.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 checked="" type="checkbox"/> Variance for: <u>Signage existing on property</u>
<input type="checkbox"/> Conventional Rezoning from _____ to: _____
<input type="checkbox"/> Planned Development
<input type="checkbox"/> Rezoning (or amendment) from _____ to: _____
<input type="checkbox"/> Extension/reinstatement of Master Concept Plan
<input type="checkbox"/> Public Hearing of DRI
<input type="checkbox"/> No rezoning required
<input type="checkbox"/> Rezoning from _____ to: _____
<input type="checkbox"/> Appeal of Administrative Action
<input type="checkbox"/> Other (explain):

### PART III – Waivers

Waivers from application submittal requirements: Indicate any specific submittal items that have been waived by the Director for the request. Attach copies of the Director's approval(s) as Exhibit 3-1.

Code Section Number	Describe Item

### PART IV – Property Ownership

<input checked="" type="checkbox"/> Single owner (individual or husband and wife)	
Name:	<u>George Freeland</u>
Address: Street:	<u>4830 Griffin Blvd</u>
City:	<u>Ft Myers</u> State: <u>FL</u> Zip Code: <u>33908</u>
Phone:	<u>239-765-6677</u> Fax: <u>239-765-6612</u>
E-mail Address:	

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

<input type="checkbox"/> Multiple owners (including corporation, partnership, trust, association, condominium, timeshare condominium, or subdivision)
Attach Disclosure Form as Exhibit 4-1
Attach list of property owners as Exhibit 4-2
Attach map showing property owners' interests as Exhibit 4-3 if multiple parcels are involved
For condominiums, timeshare condominiums, and subdivisions, see instructions.

### PART V – Property Information

#### A. Legal Description of Subject Property

Is the property entirely made up of one or more undivided platted lots officially recorded in the Plat Books of the Public Records of Lee County?
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes:
Subdivision name:
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.
--

#### C. STRAP Number(s):

24-46-23-W3-00027.0000
------------------------

#### D Property Dimensions:

Area:	square feet	acres
Width along roadway:	feet	Depth: feet

#### E. Property Street Address:

450 Harbor Ct Ft Myers Beach 33931
------------------------------------

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

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

**H. Surrounding property owners:**

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

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

<input type="checkbox"/> Low Density	<input type="checkbox"/> Marina
<input type="checkbox"/> Mixed Residential	<input type="checkbox"/> Recreation
<input type="checkbox"/> Boulevard	<input type="checkbox"/> Wetlands
<input 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 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 a Corporation, Limited Liability Company (LLC),  
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

See attached explanatory notes for instructions

I, Emily McDaniel as Manager  
of Moss Marine, 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

Moss Marine  
Name of Entity (corporation, LLC, partnership, etc)

Emily McDaniel  
Signature

Manager  
Title of Signatory

Emily McDaniel  
Typed or Printed Name

State of FL

County of Lee

The foregoing instrument was sworn to (or affirmed) and subscribed  
before me this 12/30/11 by Emily McDaniel  
Date Name of person under oath or affirmation

who is personally known to me or who has produced \_\_\_\_\_  
Type of identification

as identification.

Teresa George  
Signature of person administering oath

Teresa George  
Typed or Printed Name

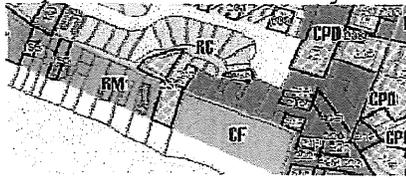
SEAL:



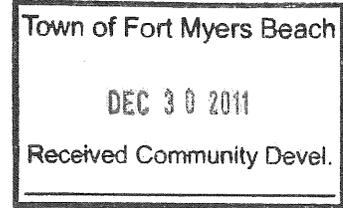
Case # FWBVAR 2011  
 Planner \_\_\_\_\_

Date Received 12/30/11  
 Date of Sufficiency/Completeness \_\_\_\_\_

**Town of Fort Myers Beach**  
 Department of Community Development



Zoning Division



**Supplement PH-B**

**Additional Required Information for a  
 Variance Application**

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

<b>Case Number:</b>
<b>Project Name:</b> <i>Moss Marine / Big M Casino</i>
<b>Authorized Applicant:</b> <i>George Freeland or Emily McDaniel</i>
<b>LeePA STRAP Number:</b> <i>24-46-23-W3-00026.0026</i> <i>24-46-23-W3-00027.0000</i>

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

Variance is requested from:

LDC Section Number	Title of Section or Subsection
<i>Chapter 30</i>	<i>Signs</i>

Complete the narrative statements below for EACH variance requested.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

PART I  
Narrative Statements

Request for variance from Ch 30 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

Our existing signage is over size according to the new LDC.

Reasons for request

Explain why the variance is needed:

Most of our signage has been in place for 15+ years. Our barn roof has been painted with the Big M logo since 1964 and is a landmark for most. Most of our existing signage is on the Bay side of our property for our marine customers and needs to be large enough to see from the water.

**Explain the possible effect the variance, if granted, would have on surrounding properties:**

We are a very large parcel, 3 acres, and again most of our signage is byside so surrounding properties do not even see it. We have one sign attached to the building that you see as you approach the property

**Explain the hardship (what is unique about the property) that justifies relief from the regulation:**

We are a 3 acre parcel with very large buildings that attract boaters to our facilities. We do only have one Casino sign on the building to direct the Casino boat customers once they are on property. We are not a 30ft store front on Main St so our signage is appropriate. The "Big M" on the roof of our storage barn we feel is a FMB landmark and has been in place since 1964.

Case # \_\_\_\_\_  
Planner \_\_\_\_\_

Date Received \_\_\_\_\_  
Date of Sufficiency/Completeness \_\_\_\_\_

**Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.**

Mass Marine aka The Big M has been in business on FMB since 1964 and our signage is adequate and size appropriate for what it is intended. It is not over used, flashy and does not obstruct views or disturb neighboring homes and/or businesses.



**Lee County Property Appraiser**

Tax Year

[Next Lower Parcel Number](#) [Next Higher Parcel Number](#) [Tangible Accounts](#) [Tax Estimator](#) [Tax Bills](#) [Print](#)

**Property Data for Parcel 24-46-23-W3-00027.0000**

**Owner Of Record**

FREELAND GEORGE T  
4830 GRIFFIN BLVD  
FORT MYERS FL 33908

**Site Address**

450 HARBOR CT  
FORT MYERS BEACH FL 33931

**Legal Description**

PARL IN SE1/4 DESC OR1656/  
2886+MATANZAS VIEW BLK B  
PB9/40 PT LT 21 + SUB LAND

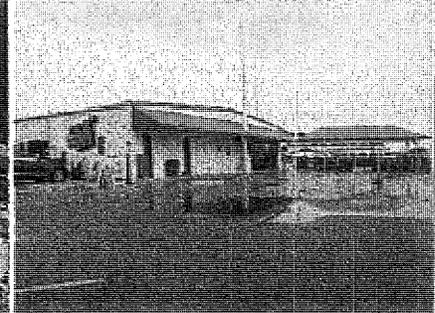
**Classification / DOR Code**

AIRPORTS, TERMINALS, PIERS / 20

**[ Tax Map Viewer ]**



**Image of Structure**



**[ Pictometry Aerial Viewer ]**

← Photo Date March of 2010 →

**Property Values (2011 Tax Roll)**

**Exemptions**

**Attributes**

Property Values (2011 Tax Roll)	Exemptions	Attributes
<b>Just</b> 996,832	<b>Homestead / Additional</b> 0 / 0	<b>Land Units Of Measure</b> SF
<b>Assessed</b> 996,832	<b>Widow / Widower</b> 0 / 0	<b>Units</b> 65982.00
<b>Portability Applied</b> 0	<b>Disability</b> 0	<b>Frontage</b> 0
<b>Cap Assessed</b> 996,832	<b>Wholly</b> 0	<b>Depth</b> 0
<b>Taxable</b> 996,832	<b>Senior</b> 0	<b>Total Number of Buildings</b> 2
<b>Cap Difference</b> 0	<b>Agriculture</b> 0	<b>Total Bedrooms / Bathrooms</b> 0 / 2.0
		<b>Total Buildings Sq Ft</b> 27,876
		<b>1st Year Building on Tax Roll</b> 1968
		<b>Historic District</b> No



**Taxing Authorities**



**Sales / Transactions**



**Building/Construction Permit Data**



**Parcel Numbering History**



**Solid Waste (Garbage) Roll Data**



**Flood and Storm Information**



**Appraisal Details**

TRIM (proposed tax) Notices are available for the following tax years  
[ 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 ]

[Next Lower Parcel Number](#) [Next Higher Parcel Number](#) [New Query](#) [Search Results](#) [Home](#)



**Lee County Property Appraiser**

Tax Year

[Next Lower Parcel Number](#) [Next Higher Parcel Number](#) [Tangible Accounts](#) [Tax Estimator](#) [Tax Bills](#) [Print](#)

**Property Data for Parcel 24-46-23-W3-00026.0020**

**Owner Of Record**

FREELAND GEORGE T  
4830 GRIFFIN BLVD  
FORT MYERS FL 33908

**Site Address**

450 HARBOR CT  
FORT MYERS BEACH FL 33931

**Legal Description**

PARL IN SE 1/4  
SEC 24 TWP 46 RGE 23  
DESC OR 1447 PG 1434

**Classification / DOR Code**

WAREHOUSING, DISTRIBUTION  
TERMINALS / 48

[ Tax Map Viewer ]



[ Pictometry Aerial Viewer ]

**Image of Structure**



Photo Date January of 2011

**Property Values (2011 Tax Roll)**

**Exemptions**

**Attributes**

		Homestead / Additional	0 / 0	Land Units Of Measure	SF
<b>Just</b>	1,205,014	Widow / Widower	0 / 0	Units	78000.00
<b>Assessed</b>	1,205,014	Disability	0	Frontage	0
<b>Portability Applied</b>	0	Wholly	0	Depth	0
<b>Cap Assessed</b>	1,205,014	Senior	0	Total Number of Buildings	2
<b>Taxable</b>	1,205,014	Agriculture	0	Total Bedrooms / Bathrooms	0 / 0.0
<b>Cap Difference</b>	0			Total Buildings Sq Ft	32,576
				1st Year Building on Tax Roll	1987
				Historic District	No



**Taxing Authorities**



**Sales / Transactions**



**Building/Construction Permit Data**



**Parcel Numbering History**



**Solid Waste (Garbage) Roll Data**



**Flood and Storm Information**



**Appraisal Details**

TRIM (proposed tax) Notices are available for the following tax years  
[ 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 ]

[Next Lower Parcel Number](#) [Next Higher Parcel Number](#) [New Query](#) [Search Results](#) [Home](#)

# *Town of Fort Myers Beach*

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

*Reasons for request. Explain why the variance is needed.*

Please provide a more detailed account as to why the variance is needed; please direct the explanation to include a discussion as to why the subject property cannot come into compliance with all the requirements of Chapter 30 of the LDC.

*Explain the hardship (what is unique about the property) that justifies relief from the regulations.*

Please provide a more detailed account as to why the variance is needed. Please consider using any additional methods, i.e. maps, drawings, site plans, etc to help justify the request.

*Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision making compliance in LDC Section 34-87(3).*

Please provide a more detailed account as to how and why the subject property qualifies for a variance. Please provide a detailed response to the five points with subsection 3 of LDC Section 34-87. For your convenience Section 34-87(3) is provided in its entirety below:

(3) **Findings.** Before granting any variance, the town council must find that all of the following exist:

- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

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

Leslee Chapman  
Zoning Coordinator  
239-765-0202 ext 105