

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: 2013-132

**1. Requested Motion:** Motion to adopt Ordinance 13-08, amendments to the LDC relating to mobile tourist information centers.

**Meeting Date:** Nov 4, 2013

**Why the action is necessary:** State law requires a public hearing for the adoption of an ordinance.

**What the action accomplishes:** Adopts the Ordinance.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

**5. Background:**

This ordinance has been drafted at the request of the Fort Myers Beach Chamber of Commerce. They are planning to utilize a mobile tourist information center to advise tourists and provide a venue for tourists and residents to purchase local attraction and event tickets. The current LDC provisions limit this type of use unless a special exception is obtained and there is no provision that allows the sale of local attraction and event tickets. Town staff has worked with Bud Nocera of the Chamber to draft revisions to the LDC to accommodate up to two such centers that must be run by a not-for-profit entity.

The LPA considered this request at their September 17, 2013 meeting. The LPA resolution recommending approval is attached with the copy of Ordinance 13-08.

**6. Alternative Action:** Decline to adopt the ordinance.

**7. Management Recommendations:** Adopt the ordinance.

**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

Town of Fort Myers Beach  
ORDINANCE NO. 13-08

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 37, SUBDIVISION II, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING SECTION 34-3051, "TEMPORARY WELCOME STATIONS;" RENAMING THAT SECTION TO "MOBILE TOURIST INFORMATION CENTER;" AMENDING THE PERMITTED ACTIVITIES TO ALLOW THE SALE OF TICKETS FOR LOCAL ATTRACTIONS; AMENDING THE LENGTH OF PERMIT TO ONE (1) YEAR AND LIMITING THE NUMBER OF MOBILE TOURIST INFORMATION CENTERS TO TWO (2) AT ANY ONE TIME; REMOVING SPECIAL EXCEPTION AND LOCATION REQUIREMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes and other applicable provisions of law.

Section 2. Adoption of Amendments to Chapter 34 of the Town of Fort Myers Beach Land Development Code. Chapter 34, Article IV, Division 37, Subdivision II, Section 34-3051 of the Town of Fort Myers Beach Land Development Code is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, 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 \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
Town Attorney

ATTEST:

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

EXHIBIT "A"

Sec. 34-3051. ~~Temporary welcome stations~~  
Mobile Tourist Information Centers.

(a) *Defined.* ~~Temporary welcome stations~~ Mobile tourist information centers are located in a mobile vehicle, either self-propelled or otherwise readily moveable from place to place, and are operated by a non-profit organization. ~~Welcome stations~~ Mobile tourist information centers are intended to promote community businesses and organizations and are therefore limited to providing information without the sale or distribution of any product or service, provided, however, that such centers are permitted to sell tickets for local attractions and events. ~~Welcome stations~~ mobile tourist information centers may not collect food or clothing or accept other donations.

(b) *Type of approval.*

(1) *Administrative*

a. *Length of Permit.* A ~~temporary-use~~ permit to operate a mobile tourist information center may be issued for a maximum of ~~90 days or less~~ one (1) year, and may ~~not~~ be renewed or reissued to the same applicant or on the same premises for a period of ~~6 months from the date of expiration of the previous permit~~ annually. An organization may request an annual permit to operate no more than ~~6 months during any 1 year period.~~ The 6 months may be consecutive or divided into 2, 3, or 4 month periods. No more than ~~two (2) welcome stations~~ Mobile Tourist Information Centers may be operating at one time.

b. *Location.* ~~Temporary welcome stations~~ mobile tourist information centers may be located in existing parking lots on property zoned commercial. The ~~welcome station~~ mobile tourist information center must be ancillary to the principal use and the required number of parking spaces for the principal use must be maintained.

c. *Permit requirements.* In addition to the requirements found in § 34-

3050, organizations must provide a photograph of the ~~welcome station~~ mobile tourist information center and its dimensions, ~~the~~ dates and corresponding locations where the ~~welcome station~~ mobile tourist information center will be operating, daily hours of operation for a minimum of 5 days per week, and a site plan of the parking lot, drawn to scale with the location of existing parking spaces and the ~~welcome station~~ mobile tourist information center. Each ~~welcome station~~ mobile tourist information center is permitted one 24-square-foot identification sign, mounted on the ~~welcome station~~ mobile tourist information center, which should be shown in the required photograph.

d. *Review of permit.* The director will approve or deny the application, in part or whole, based on the ~~welcome station~~ mobile tourist information center's consistency with the standards established for outdoor display of merchandise and compatibility with surrounding uses. The ~~welcome station~~ mobile tourist information center must be maintained in good condition, consistent with the photograph submitted with the application. Failure to ~~comply with the minimum hours of operation provided~~ may result in revocation of the temporary use permit.

e. *Emergency Evacuation.* Mobile ~~welcome stations~~ tourist information centers must be removed from the county town or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.

(2) *Special Exception*

a. *Length of Approval.* ~~Temporary welcome stations~~ may be approved for longer periods of time by receiving a special

exception. ~~A special exception approval may include a specific length of time the approval is in effect.~~

~~b. *Application requirements.* Applications must comply with article II, division 4 of this chapter, including § 34-203(d) special exceptions. The director may waive § 34-201(b)(1) which requires all properties to be abutting or have a rational continuity. Non-abutting properties must meet the location requirements established in this section. If the request involves multiple parcels, applications must include a surrounding property owners list and map for all property owners within 300 feet, including individual condominium owners.~~

~~c. *Location.* The request may include multiple, non-abutting properties. Welcome stations may be approved on property zoned commercial, in existing commercial parking lots, or in the parking lot of an existing principal use. Where the station is an ancillary use, the required number of parking spaces for the principal use must be maintained.~~

~~d. *Standards for approval.* In addition to the considerations for special exceptions found in § 34-88, requests must meet the following performance and locational standards:~~

- ~~1. Welcome stations must remain at an approved location a minimum of 30 days before moving to a different approved location.~~
- ~~2. Welcome stations must operate a minimum of 5 days per week, 4 hours per day.~~

~~3. Each welcome station is permitted one 24 square foot identification sign, mounted on the welcome center.~~

~~4. Welcome stations must be able to be removed from the county or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.~~

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2013-010  
Mobile Tourist Information Centers

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

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

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on September 17, 2013, to consider a proposed Town Ordinance amending the LDC with regard to 'Temporary Welcome Stations' renaming that section to 'Mobile Tourist Information Centers', and amending Section 34-3051 of the LDC; and

WHEREAS, a copy of the proposed Ordinance 13-xx is attached hereto as Exhibit A and is hereby incorporated by reference.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that the Town Council of the Town of Fort Myers Beach **APPROVE** and adopt a Town Ordinance amending the LDC with regard to the 'Temporary Welcome Stations' renaming that section to Mobile Tourist Information Centers, as set forth in the Ordinance 13-xx attached as Exhibit A.

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

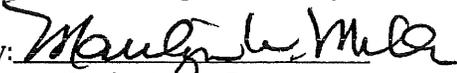
Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	excused
Al Durrett, Member	AYE	John Kakatsch, Member	AYE
Jane Plummer, Member	excused	Alan Smith, Member	AYE
Jim Steele	AYE		

DULY PASSED AND ADOPTED THIS 17<sup>th</sup> day of **SEPTEMBER, 2013**.

Local Planning Agency of the Town of Fort Myers Beach

By:   
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

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

ATTEST:

By:   
Michelle Mayher  
Town Clerk

Town of Fort Myers Beach  
ORDINANCE NO. 13-

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Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Alan Mandel, Mayor  
Joe Kosinski, Vice Mayor  
Dan Andre

Bob Raymond  
Jo List

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this  
\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: \_\_\_\_\_  
Michelle D. Mayher, Town Clerk

BY: \_\_\_\_\_  
Alan Mandel, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Fowler White Boggs, Town Attorney

EXHIBIT "A"

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e. *Emergency Evacuation.* ~~Mobile welcome stations~~ tourist information centers must be removed from the ~~county town~~ or placed within an approved off-site storage area within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center.

~~(2) Special Exception~~

a. *Length of Approval.* Temporary welcome stations may be approved for longer periods of time by receiving a special exception. A special exception approval may include a specific length of time the approval is in effect.

b. *Application requirements.* Applications must comply with article II, division 4 of this chapter, including § 34-203(d) special exceptions. The director may waive § 34-201(b)(1) which requires all properties to be abutting or have a rational continuity. Non abutting properties must meet the location requirements established in this section. If the request involves multiple parcels, applications must include a surrounding property owners list and map for all property owners within 300 feet, including individual condominium owners.

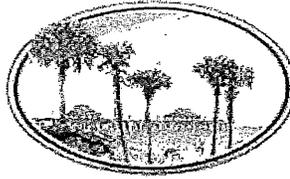
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**FORT MYERS BEACH  
LOCAL PLANNING AGENCY (LPA)  
MINUTES**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, Florida  
**Tuesday, September 17, 2013**

**I. CALL TO ORDER**

Meeting was called to order at 9:05 a.m. by Chair Zuba; other members present:

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

LPA Attorney: Marilyn Miller  
Staff Present: Walter Fluegel, Community Development Director  
Leslee Dulmer, Zoning Coordinator

**II. PLEDGE OF ALLEGIANCE**

**III. INVOCATION**

**IV. MINUTES**

A. Minutes of August 13, 2013

**MOTION:** Mr. Kakatsch moved to approve the Minutes for August 13, 2013; second by Mr. Smith.

**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

## V. PUBLIC HEARINGS

### A. SEZ2013-0003, Beach Bums COP

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – excused; Ms. Shamp – excused.

Zoning Coordinator Dulmer noted some ‘housekeeping items’ regarding the subject case:

- The sixth proposed condition in the proposed resolution would be removed because it did not apply to the subject property (#6 – No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.).
- The Town received a letter of objection on September 12, 2013 from adjacent property owner George Ganim, owner of the Beacon Motel.

She presented comments for SEZ2013-0003, Special Exception for Beach Bums, 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 1188-1190 Estero Boulevard. She reviewed the Applicant’s request for a special exception in the Downtown zoning district to allow outdoor consumption on premises (COP) on the subject property (Zoning: Downtown; Future Land Use: Pedestrian Commercial). She displayed depictions (2) of the Proposed Site Plan which indicated the designated consumption area of the subject property. She reviewed the supporting regulations:

- Section 34-88 Special Exceptions
  - Function – the Town Council shall hear and decide all applications for special exceptions permitted by the district use regulations.
  - Considerations – In reaching its decision, the Town Council shall consider the following whenever applicable:
    - Section 34-88(2)(a) – *Whether there exist changed or changing conditions [that] make approval of the request appropriate.* As contemplated in the Comprehensive Plan, the Times Square area has continued to emerge as a vibrant urban core for the Town, and as such the area can support an intensive variety of uses that is consistent with the Applicant’s request. The Applicant has stated that the existing restaurant already had outdoor seating at the time the business was purchased. The Applicant has already installed rope and posts on the subject property to delineate the area for consumption and is also willing to install a shrub bordering to further designate the consumption along with signs. While there are not changing conditions at the subject property, the request remains consistent with the intended use of the area.
    - Section 34-88(2)(e) – *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.* The subject

property is located in the Downtown Core area. The Comprehensive Plan describes a vision for this area that “boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an ‘Old Estero Island’ character to the buildings’. The Applicant’s request for outdoor COP certainly could further this goal. The Applicant’s request is consistent with the Estero Boulevard vision and contributes to the pedestrian scale and casual ambiance set forth by the goals of the Comprehensive Plan. Again, the Applicant’s request is in keeping with this vision, by providing an additional venue for the enjoyment of the unique outdoor environment of Fort Myers Beach.

- Section 34-88(2)(f) – *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.* The request of outdoor consumption on premises is not an allowable use by right on the subject property. It is however, a use permitted by special exception. The Applicant’s request is appropriate in this location because the subject property is located in the Downtown Core Area. The requested COP is consistent with the goals, objectives, policies, and intent of the Comprehensive Plan which describes a vibrant tourist commercial district in the Downtown core.
- Section 34-88(2)(g) – *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.* The proposed special exception will have no negative effect on the environmentally critical areas and natural resources of Fort Myers Beach since the subject property’s location is landward of the 1978 Coastal Construction Control Line (CCCL), provided that the sea turtle lighting standards are complied with.
- Section 34-88(2)(h) - *Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.* The subject property and the area immediately surrounding it, is within the Pedestrian Commercial Future Land Use category and the Comprehensive Plan’s vision of this area does not require that it be transformed from the established intensively commercial area. It possesses a vibrant mix of uses. The existing use is another outdoor café surrounded by many pedestrian-friendly shops and restaurants. Staff feels the Applicant’s request is generally compatible and appropriate within this area.
- Section 34-88(2)(i) – *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.* Staff recommends finding that the requested use, as conditioned, is in compliance with applicable zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34 for the Downtown district.

She reported that staff recommended approval with conditions of the requested special exception in the Downtown zoning district to allow outdoor consumption of premises on the subject property. She noted the conditions were as follows:

1. Legible signs will be clearly posted at each entrance to the seating area for the areas not approved for on-premise consumption stating “Alcoholic Beverages are Prohibited Beyond this Point”.

2. The COP area must be restricted by rope and posts.
3. Lighting on the outdoor seating areas must be shuttered and shielded from the surrounding properties and must comply with sea turtle lighting provisions.
4. The hours of alcohol service shall be from 11:00 a.m. to 1:45 a.m., Monday through Saturday and 11:00 a.m. to 11:00 p.m. on Sunday.
5. The outdoor seating area cannot exceed current building, fire, and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
6. The approved area is limited to the attached Site Plan Exhibit 'B'.

Mr. Smith asked the location of the business owned by the person who wrote the letter of objection in relation to the subject property.

Zoning Coordinator Dulmer indicated the location of the subject property and the property in question on a site map displayed on the overhead screen.

Mr. Smith asked if the Applicant intended to have amplified or live music at the subject property.

Zoning Coordinator Dulmer reported there was no request included in the special exception application for live or amplified music.

Cindy Bonsignori, representing the Applicant, noted she was present to answer questions. She explained that Beach Bums was a small outdoor café and they believed the sale of beer and wine would go along well with their menu items.

Chair Zuba complimented Ms. Bonsignori for offering to install the landscaping and asked if they would agree to the landscaping as a condition.

Ms. Bonsignori responded in the affirmative.

Chair Zuba asked if there were any plans for the type of landscaping.

Ms. Bonsignori stated the Applicants had researched landscaping to determine what type of plants would work best.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding the proposed improvements at the subject property.

Mr. Smith noted he did have a conversation with one of the principals of the subject business yesterday, and that the owners were well-aware of the problems associated with drinking.

Chair Zuba questioned what methods of enforcement would be taken in order to stop alcoholic beverages leaving the subject premises.

Ms. Bonsignori noted there would be the designated consumption area, rope and posts, signage, and it would be monitored by staff.

- MOTION:** Mr. Durrett moved to approve SEZ2013-0003, Beach Bums COP, with the conditions contained in the draft Resolution except for Condition #6:
1. Legible signs will be clearly posted at each entrance to the seating area for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point".
  2. The COP area must be restricted by rope and posts.
  3. Lighting on the outdoor seating areas must be shuttered and shielded from the surrounding properties and must comply with sea turtle lighting provisions.
  4. The hours of alcohol service shall be from 11:00 a.m. to 1:45 a.m., Monday through Saturday and 11:00 a.m. to 11:00 p.m. on Sunday.
  5. The outdoor seating area cannot exceed current building, fire, and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.
  6. ~~No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.~~
  7. The approved area is limited to the attached Site Plan Exhibit 'B'.

Chair Zuba requested that a condition regarding the landscaping be included.

Motion Maker agreed to include a condition regarding the landscaping.

**SECOND:** Mr. Kakatsch.

**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

Public Hearing closed.

#### B. SEZ 2013-0002 Yucatan Beach Stand COP

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit and a conversation; Chair Zuba – site visit and a conversation; Mr. Steele – site visit and a conversation with the owner; Ms. Plummer – excused; Ms. Shamp – excused.

Attorney Grady, authorized agent for the Stingrays Raw Bar, Inc., presented comments on the Special Exception for the Yucatan Beach Stand on behalf of the Applicant. She explained the request was for an extension of the COP on the deck at the Yucatan Beach Stand at 250 Old San Carlos Boulevard. She described the subject property and some of the surrounding commercial properties; and noted the site was in the Pedestrian Commercial area. She reported the COP was granted to the Applicant by the Town Council by Resolution 07-29. She noted that Town staff recommended approval and found the request to be consistent with the Comprehensive Plan and Land Development Code. She indicated the Applicant agreed with the Staff Report; however, they requested one minor modification because the business now offered breakfast. She requested Condition #4 be amended so they could serve earlier: "The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of ~~11:00 a.m.~~ 7:00 a.m. and 12:00 midnight; between ~~11:00 a.m.~~ 7:00 a.m. and 1:00 a.m. on Friday and Saturday; and between ~~11:00 a.m.~~ 7:00 a.m. and 10:00 p.m. on Sunday". She noted this amendment would be consistent with an approval granted by the LPA and Town Council to the Beached Whale. She stated the Yucatan Beach Stand was an asset to the Town and had been developed consistent with the Town's design criteria.

Mr. Smith asked if the condition related to the full menu of food was acceptable to the Applicant.

Attorney Grady responded in the affirmative.

Chair Zuba questioned the aspect of the request that 'it had already been done'.

Attorney Grady explained the request was for the ability to serve alcoholic beverages; that the original purpose of the deck was to be a waiting area; that the Applicant had filed for the revised building permit due to the roof over the deck; and that they were working with staff on the matter.

Discussion was held concerning the date(s) of approval; construction of the deck; and how the Town discovered the violation.

Zoning Coordinator Dulmer presented comments for SEZ2013-0002, Special Exception for the Yucatan Beach Stand, 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 250 Old San Carlos Boulevard. She reviewed the Applicant's request for a special exception to expand the outdoor consumption on premises (4COP) approval to include an additional 190 square feet on a proposed new deck in the Downtown zoning district on the subject property (Zoning: Downtown; Future Land Use: Pedestrian Commercial). She displayed the Proposed Site Plan and briefly discussed the case history:

- Original Special Exception granted via Resolution 07-29 -- approving outdoor COP with 4COP license
- Applied for building permit COM12-0088 -- scope listed on permit: 'build deck area for smoking'; permit issued 9/5/12; final inspection revealed additional work and additional uses, i.e. alcohol consumption
- Notice of Violation issued 3/16/13 -- CE13-0139
- Contractor submitted amended building plans, revising scope of work

- Property owner applied for Special Exception on 5/3/13 to correct the COP issue

She utilized a PowerPoint presentation that included information on the supporting regulations as follows:

- Section 34-88 Special Exceptions

- Function – the Town Council shall hear and decide all applications for special exceptions permitted by the district use regulations.
- Considerations – In reaching its decision, the Town Council shall consider the following whenever applicable:
  - Section 34-88(2)(a) – *Whether there exist changed or changing conditions [that] make approval of the request appropriate.* As contemplated in the Comprehensive Plan, the Times Square/Downtown area has continued to emerge as a vibrant urban core for the Town, and as such the area can support a more intensive variety of uses that are appealing and attractive to residents and visitors alike. The Applicant’s request to provide additional outdoor covered area for its patrons is consistent with this policy. Furthermore, the request of this application reflects an after-the-fact amendment to an existing special exception approval to include additional area for consumption on premises. Therefore, changed conditions, i.e. the new deck, does exist that make approval of the request appropriate.
  - Section 34-88(2)(e) – *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.* The subject property is located in the Pedestrian Future Land Use category in what the Comprehensive Plan terms the Downtown Core. The Comprehensive Plan describes a vision for this area that “boasts a revitalized entertainment area with tree-shaded outdoor cafes, pedestrian streets, and an ‘Old Estero Island’ character to the buildings”.
  - Section 34-88(2)(f) – *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.* The very nature of this application indicates that the requested use of consumption on premises is not a use allowable by right on the subject property. It is. However, a use permitted by special exception (See Section 34-1264(a)(2)). Outdoor dining, both on private and on public property is encouraged by the Comprehensive Plan and the Land Development Code. The Applicant’s request is appropriate at this site because it is a request to amend a prior Council-approved special exception. Approval of the Applicant’s request, along with conditions recommended by staff, would ensure that all performance standards are met.
  - Section 34-88(2)(g) – *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.* The Applicant’s request will have no negative effect on the environmentally critical areas and natural resources of Fort Myers Beach because the subject property’s location is located in an established commercial district, landward of the Coastal Construction Line(s) and far from environmentally critical areas and sensitive natural resources. Staff has recommended a condition of approval to require that any outdoor lights meet with the sea turtle lighting requirements.

- Section 34-88(2)(h) - *Whether the request would be compatible with existing or planned uses and not cause damage, hazard, nuisance or other detriment to persons or property.* The subject property and the area immediately surrounding it, is within the Pedestrian Commercial Future Land Use category. The Comprehensive Plan's vision of this area does not require that it be transformed from the established intensively commercial area into a primarily residential district or any other use. It possesses a vibrant mix of uses, and as such, staff feels the Applicant's request is compatible and appropriate within its neighborhood.
- Section 34-88(2)(i) – *Whether the requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.* The consumption on premises of alcoholic beverages on the subject property will be required to comply with the applicable standards in the Fort Myers Beach LDC including, but not limited to §34-1264. Staff recommends finding that the requested use, as conditioned, is in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

She reported that staff recommended approval with conditions of the requested special exception in the Downtown zoning district to expand the area where outdoor consumption of premises is permitted to include 190± square feet of new deck at the side of the existing building. She noted that staff did not have any concerns with the Applicant's request to change the hours listed in Condition #4 and she pointed out there were recommended conditions for approval as follows:

1. Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to occur only within the enclosed walls and further restricted to the following hours: 11:00 a.m. to 11:00 p.m. from Monday through Thursday; 11:00 a.m. through 12:00 midnight on Friday and Saturday; and 11:00 a.m. through 10:00 p.m. on Sunday. Live music must be limited to non-amplified music.
2. The special exception is limited to on-premises consumption of alcoholic beverages in a 4,690 square foot area encompassing the indoor areas, both roofed patio/deck areas, and walk-in coolers as shown on the site plan, which is attached to this resolution as Exhibit B and hereby incorporated by reference.
3. The special exception is limited to a 4COP license for on-premise consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic beverages in restaurants. The terms and conditions of this approval as set forth in this resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law.
4. The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of ~~11:00 a.m.~~ 7:00 a.m. and 12:00 midnight; between ~~11:00 a.m.~~ 7:00 a.m. and 1:00 a.m. on Friday and Saturday; and between ~~11:00 a.m.~~ 7:00 a.m. and 10:00 p.m. on Sunday.
5. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.

6. Gross revenues from sale of food and non-alcoholic beverages must not fall below 51% of total sales over any 12-month period, or over the period during which the business has been in operation if the business has not been in operation for 12 months or more. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. The Town Manager may require an audit of the records of the business to verify compliance at the applicant's sole cost and to be conducted by an independent auditor of the Town's selection in the Town's sole judgment.
7. The business must be in full compliance at all times with applicable provisions of State beverage law for the series of beverage license it holds.
8. The use must comply at all times with lighting standards, including the regulations for the protection of sea turtles found in LDC Chapter 14, Article II.
9. This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.
10. Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval.

Chair Zuba asked Zoning Coordinator Dulmer if she felt the Applicant would be compliant with the recommended conditions.

Zoning Coordinator Dulmer noted the property owners had worked with the staff rather quickly to come into compliance once the violation was brought to their attention.

Mr. Kakatsch questioned if landscaping was involved with the special exception request.

Zoning Coordinator Dulmer explained there was no landscaping requirement since the deck extended somewhat into the parking lot. She added staff did not want to create any traffic circulation situations due to landscaping. She described where there was landscaping on the subject property.

Mr. Kakatsch indicated his belief that there was an ability to enhance the landscaping and would like to see that as a condition of approval.

Community Development Director Fluegel asked if Mr. Kakatsch was requesting landscaping in the front of the outdoor deck area.

Mr. Kakatsch responded in the negative; and added the landscaping would be in front of the building.

Attorney Grady indicated on the overhead projection screen where the subject building was located on the property line; and where landscaping existed.

Tom Kolar reported there was landscaping across the deck area; however, the landscaping was not mature yet. He noted his belief that his property was 'maxed-out' for landscaping.

Discussion was held regarding the request to start service at 7:00 a.m.; and recommended Condition #6 and related monitoring and auditing.

Tom Kolar stated the subject business was approximately 75% food and 25% alcoholic beverage sales; and was not a nightclub and catered more to family dining.

Zoning Coordinator Dulmer pointed out that most of the recommended conditions of approval were a carry-over from Resolution 07-29.

LPA Attorney Miller asked if the Applicant's license was a straight 4COP.

Tom Kolar reported the type of license the business possessed also gave them the ability to have a package store.

LPA Attorney Miller indicated Condition #6 was usually for businesses with an SRX rider to their license; and added the Town did not have the ability to monitor the sales.

Discussion was held concerning the Applicant's 4COP license and Condition #6.

LPA Attorney Miller explained it was up to the LPA to decide on whether or not to include Condition #6.

Discussion continued regarding Condition #6 and whether or not to include the proposed condition as part of the approval.

Public Comment opened.

No speakers.

Public Comment closed.

- MOTION:** Mr. Steele moved to approve SEZ2013-0002, Yucatan Beach Stand, with conditions:
1. Outdoor music or similar entertainment is prohibited. Indoor music and/or similar entertainment is restricted to occur only within the enclosed walls and further restricted to the following hours: 11:00 a.m. to 11:00 p.m. from Monday through Thursday; 11:00 a.m. through 12:00 midnight on Friday and Saturday; and 11:00 a.m. through 10:00 p.m. on Sunday. Live music must be limited to non-amplified music.
  2. The special exception is limited to on-premises consumption of alcoholic beverages in a 4,690 square foot area encompassing the indoor areas, both roofed patio/deck areas, and walk-in coolers as shown on the site plan, which is attached to this resolution as Exhibit B and hereby incorporated by reference.
  3. The special exception is limited to a 4COP license for on-premise consumption of alcoholic beverages. The sale of alcoholic beverages on the subject property must comply with the provisions of LDC Section 34-1264(k) concerning sale of alcoholic

beverages in restaurants. The terms and conditions of this approval as set forth in this resolution shall be deemed to equally apply should the applicant cease operation of a 4COP and operate under the terms of an SRX series license as defined by Florida law.

4. The hours of operation during which alcoholic beverages may be served on-premises are limited to Monday through Thursday between the hours of ~~11:00 a.m.~~ 7:00 a.m. and 12:00 midnight; between ~~11:00 a.m.~~ 7:00 a.m. and 1:00 a.m. on Friday and Saturday; and between ~~11:00 a.m.~~ 7:00 a.m. and 10:00 p.m. on Sunday.
5. A full menu of food, encompassing full-course meals, must be available and offered to indoor and outdoor seating during hours of operation for consumption on premises. The sale of alcoholic beverages must be incidental to the sale of food.
6. ~~Gross revenues from sale of food and non-alcoholic beverages must not fall below 51% of total sales over any 12-month period, or over the period during which the business has been in operation if the business has not been in operation for 12 months or more. If sale of alcoholic beverages exceeds 49% of total sales, this approval will become null and void. The Town Manager may require an audit of the records of the business to verify compliance at the applicant's sole cost and to be conducted by an independent auditor of the Town's selection in the Town's sole judgment.~~
7. The business must be in full compliance ~~at all times~~ with applicable provisions of State beverage law for the series of beverage license it holds.
8. The use must comply at all times with lighting standards, including the regulations for the protection of sea turtles found in LDC Chapter 14, Article II.
9. This resolution does not grant consent for an awning or overhang proposed in the site plan to be constructed over the public right-of-way. The Town Council must address this matter separately.
10. Condition #9 above does not grant the owner or successor in interest undeniable right to development order approval.

**SECOND:** Mr. Smith

**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

Public Hearing closed.

Recessed at 9:45 a.m. – Reconvened at 9:55 a.m.

C. DCI 2013-0001 Pink Shell CPD Amendment

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – site visit; Mr. Kakatsch – site visit; Mr. Smith: - site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – excused; Ms. Shamp – excused.

Attorney Grady, authorized agent for the New Pink Shell, LLC, presented comments on the Pink Shell CPD Amendment on behalf of the Applicant. She explained the request was for an amendment to the existing CPD, known as the Pink Shell CPD to add a use to the Schedule of Uses for ‘Recreation, Commercial with membership’. She reviewed how the membership would permit the use of the resort accessory uses including but not limited to food, beverage services, personal services, pools, beach access, and docks. She stated the Applicant was in agreement with the staff conditions and the recommendation of approval. She described how the program had been designed consistent with the operation of Pink Shell, and noted there was no change in the physical facility. She introduced Robert Mulhere, FAICP with Hole Montes and expert in use and site planning; and Ted Treesh of Transportation Consultants, Inc.

Robert Mulhere, FAICP, of Hole Montes, reviewed the operational aspects of the amendment request and the parking. He discussed features of the 2010 CPD (replacement of tennis courts on the bay side with 42 parking spaces) and of the subject CPD Amendment such as but not limited to a membership cap of 350 (anticipated maximum utilization of the membership 29% on any given day or point). He noted that 25% of the hotel guests arrived by airport transit; guests arriving via boat and the Applicant’s intention to market the boating community; guests arriving by trolley, bicycle, or by walking; and the use of valet parking.

Ted Treesh of Transportation Consultants, Inc. explained his review of the request as it pertained to impact on the transportation network (specifically in compliance with the Comp Plan); and how they looked at the trip generation and current road volumes. He stated the analysis showed that there was available capacity on the roads in the peak season that met the requirements of the Comp Plan and the Land Development Code; and that they did not take into account any trip reductions that involved what Mr. Mulhere mentioned (guests by means other than their own car).

Attorney Grady noted the belief that the Applicant took into account adequate parking for the memberships, took into account the maximum usage, and looked at the actual operations and historical operation of another resort that offered memberships. She pointed out the improvements to the marina and the anticipated increase in guests arriving by boat. She requested approval of the CPD Amendment request.

Chair Zuba questioned the Traffic Study and what the level of service for Estero Boulevard was in relation to State evaluation.

Ted Treesh of Transportation Consultants, Inc. reported currently, based on data from Lee County, Estero Boulevard had an “E” level of service.

Chair Zuba asked if the Traffic Study took into account the use of the bridge.

Ted Treesh of Transportation Consultants, Inc. responded in the affirmative; and clarified that the additional vehicles would not change the level of service on Estero Boulevard. He explained their analysis process (i.e. using trip numbers from Lee County, etc.).

Discussion ensued regarding exiting traffic off the Island; available boat slips at the Pink Shell Marina; marketing program for Pink Shell; and other resorts utilizing the same type of membership plan.

Mr. Durrett congratulated Pink Shell for receiving the "Clean Marina" designation.

Zoning Coordinator Dulmer presented comments for the Commercial Planned Development, DCI2013-0001, Pink Shell CPD, (subject property located at 171-191, 200, 251-281, and 275/322 Estero Boulevard) on behalf of the Town of Fort Myers Beach. She reviewed the request for a Commercial Planned Development (CPD) Amendment to expand the existing CPD (known as Pink Shell Resort CPD) to add 'Recreation, Commercial with membership' to the approved schedule of uses; and enable the use of parking areas on Lots 38 and 39 for parking for employees, guests and members. She noted the subject property details to have a current zoning of Commercial Planned Development and Environmentally Critical; Future Land Use of Mixed-Residential and Recreation; and surrounding uses of high-rise condominiums, single-family beach cottages, Pink Shell Resort, and the beach. She noted that a revised Master Concept Plan (Exhibit 'B') was provided recently to the LPA. She reported the questions received from surrounding property owners dealt with the location of Lots 38 and 39. She indicated on the projection screen the location of Lots 38 and 39. She pointed out in the Staff Report, Page 3, that currently the Town's LDC did not provide a definition of "Recreation, Commercial with membership"; however, the Applicant provided the following: *Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools beach access and docks.* She pointed out the Applicant was not requesting any deviations and that the history of the subject property was lengthy and involved. Therefore, staff was consolidating all previously approved deviations into one document called "Exhibit F" (all deviations approved and in effect from Resolution 01-26, 10-05 and 10-06 remained in full force and effect). She reported staff was recommending approval with conditions of the requested amendments to the CPD zoning on the subject property to add "Recreation, Commercial with membership" to the approved uses and allow the parking areas on Lots 38 and 39 for parking for employees, guests and members. She reviewed staff's recommended conditions:

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit B.
3. The definition of 'Recreational, Commercial with membership' will be as follows: *Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools, beach access and docks.*
4. The approved Schedule of Uses are limited to those detailed on the attached *Exhibit G*.
5. The total number of commercial memberships is not to exceed 350.

Discussion was held concerning the cost of annual membership; number of commercial membership limit of 350; and the definition of commercial membership.

Chair Zuba questioned the Staff Report, Page 3, as it pertained to 'lack of details involving how memberships are defined'.

Zoning Coordinator Dulmer expressed her belief that Mr. Mulhere's earlier comments helped with the details of memberships and how staff's concern at the beginning of the application dealt with the memberships and the transportation facilities. Staff was encouraged to hear the Applicant would market the memberships to local residents and to the boating community.

Public Comment opened.

No speakers.

Public Comment closed.

Discussion ensued regarding the requested CPD Amendment and the memberships.

Chair Zuba noted his concerns regarding the proposed CPD Amendment as it related to impacting local traffic.

Mr. Steele questioned the term of 'commercial memberships'.

LPA Attorney Miller noted the prior discussion regarding 'commercial memberships' and the current Land Development Code listed in the Table. She explained how the LPA could include wording such as "provided that there shall be no membership with no more than 25 or 50".

Community Development Director Fluegel cautioned making conditions that were enforcement nightmares for the Town.

Zoning Coordinator Dulmer suggested change Condition #5 to read "*the total number of memberships was not to exceed 350*".

Discussion was held concerning whether or not to change Condition #5 regarding a limitation on memberships.

- MOTION:** Mr. Smith moved to recommend approval of Resolution 2013-013, DCI2013-0002, Pink Shell CPD Amendment with conditions identified as:
1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment
  2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit B.

3. The definition of 'Recreational, Commercial with membership' will be as follows: *Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools, beach access and docks.*
4. The approved Schedule of Uses are limited to those detailed on the attached *Exhibit G*.
5. The total number of commercial memberships is not to exceed 350.

**SECOND:** Mr. Kakatsch.

**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

Public Hearing closed.

**D. ORD. 13-XX - Mobile Tourist Information Centers**

Bud Nocera, President of the Fort Myers Beach Chamber of Commerce, reviewed the background of the Chambers work to get visitor information back onto Fort Myers Beach; and how the Chamber worked to convert a trailer into a mobile visitor information center. He noted that the Town's LDC allowed for a 3-month permit for the operation of a mobile information center; and was now requesting an amendment so they would be able to have an annual permit. He pointed out the amendment would allow for local non-profit organizations to sell event and local attraction tickets from the mobile information center. He referenced Exhibit A, Section 34-3051(a) and requested and events be added after "....local attractions"; and a recommendation for approval of the proposed ordinance.

LPA Attorney Miller reviewed the wording for the *Length of Permit*; and noted it was limited to two mobile information centers and they were to be operated by a non-profit organization. She pointed out the name was changed to "mobile tourist information center".

Discussion ensued regarding the mobile tourist information center.

**MOTION:** Chair Zuba moved to approve recommending that the Town Council of the Town of Fort Myers Beach approve and adopt a Town Ordinance amending the LDC with regard to the "Temporary Welcome Stations" with the additional change of adding and events after "....local attractions" in Section 34-3051(a); second by Mr. Durrett.

**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

**Adjourn as LPA and reconvene as Historic Preservation Board – No Action Taken.**

**Adjourn as Historic Preservation Board and reconvene as the LPA – No Action Taken**

**VI. LPA MEMBER ITEMS AND REPORTS**

Mr. Durrett – no report.

Mr. Smith – no report.

Chair Zuba – no report.

Ms. Plummer – excused.

Mr. Kakatsch – no report; requested an update on the Estero Boulevard Improvement Project.

Vice Chair Shamp – excused.

Mr. Steele – no report.

Community Development Director Fluegel explained he was not certain about the timing of Estero Boulevard.

LPA Attorney Miller recounted a meeting with the Lee County DOT and the Town Council at which the County requested direction from Council on what amenities they were seeking in which areas along Estero Boulevard. She reviewed some of the amenities and decisions Council requested from the Lee County DOT regarding the Estero Boulevard improvements. She offered an update on the utility line replacement project and coordination of the construction on Estero Boulevard.

Question and answer session ensued regarding the Estero Boulevard improvement project, water utility line installation, stormwater project, and coordination with the Lee County work.

Chair Zuba noted Mr. Smith did not reapply for the Local Planning Agency and thanked him for his service to the LPA.

Mr. Smith thanked his fellow LPA members and the Town staff for their support during his term.

## **VII. LPA ATTORNEY ITEMS**

LPA Attorney Miller – no items or report.

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

Community Development Director Fluegel mentioned the discussion on the outdoor entertainment for next month's agenda, and that the Town's planning consultant would present a report on the entertainment district concept. He reported staff prepared a draft ordinance for the outdoor display matter and would first take it back to the Retail Merchants Working Group.

Mr. Durrett asked if there would be another meeting regarding the draft ordinance for the outdoor display that would include merchants other than the Times Square area merchants.

Community Development Director Fluegel explained that staff would look at places such as Santini Plaza as an amendment to their zoning districts.

Discussion was held concerning the difference between outdoor sales and outdoor merchandise displays and the difference between different business locations in the Town (i.e. Times Square and Santini Plaza).

**IX. LPA ACTION ITEM LIST REVIEW**

No discussion.

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

No discussion.

**XI. PUBLIC COMMENT**

None.

**XII. ADJOURNMENT**

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

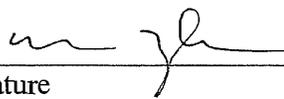
**VOTE:** Motion approved, 5-0; Vice Chair Shamp and Ms. Plummer excused.

Meeting adjourned at 10:50 a.m.

Adopted **October 8, 2013 WITH** changes.

Motion by: **Shamp**; Second by **Kakatsch**

Vote: 7-0

  
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Signature

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