

**RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 08-33**

WHEREAS, Vida Estero Beach LTD, by and through Beverly Grady, Esquire (Applicant) has applied for an extension of the approved master concept plan (MCP) for the subject property's RPD (Residential Planned Development) zoning district, with such proposed extension being for a period of two years from the date of Town Council's approval hereof; and

WHEREAS, on May 16, 2005, the Town Council passed Resolution 05-10 which approved the subject property's RPD for 12 multiple-family dwelling units in one building with 48,926 square feet of interior space and maximum height not to exceed 3 stories over 1 story of parking and 45 feet above base flood elevation; and

WHEREAS, the subject property is located at 6230 and 6240 Estero Boulevard, Fort Myers Beach, Florida; and

WHEREAS, the Applicant has indicated the property's current STRAP number is: 33-46-24-W3-00013.0020 & 33-46-24-W3-00013.0030, with the legal description attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, this application represents the first request for extension of the MCP for the subject property pursuant to the requirements of LDC Section 34-220(5)(c); and

WHEREAS, Section 34-220(5) of the Land Development Code of the Town of Fort Myers Beach (LDC) states that an extension of an approved master concept plan for an entire planned development, which may be vacated due to a failure to proceed on the Applicant's part, may be extended by the Town for a period of no more than two years from the date of the extension, based on findings of fact as set forth in LDC Section 34-220(5)(a)(1), (2) and (3); and

WHEREAS, LDC Section 34-121(2)(e) requires that the requested MCP extension for the subject property go before the Town Local Planning Agency (LPA) for recommendations before it is heard by Town Council; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on May 6, 2008, at which time the LPA recommended the Town Council approve the request, as set forth more fully in LPA Resolution 2008-17; and

WHEREAS, a public hearing was advertised for August 18, 2008 but rescheduled for August 27, 2008, due to emergency conditions associated with Tropical Storm Fay. It was held before the Town Council on August 27, 2008, at which time the Town Council gave full and complete consideration to the recommendations of staff, LPA resolution 2008-17, the documents in the file, the request of the applicant, and the testimony of all interested persons.

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

Based upon the presentations of the applicant, staff, and other interested parties at the hearing, review of LPA resolution 2008-17, the application and standards for granting an extension of an approved Master Concept Plan, the Town Council makes the following findings and reaches the following conclusions:

The Town Council **APPROVES** applicant's request to extend the Master Concept Plan for the subject property's RPD (Residential Planned Development) zoning district as approved by Town Council Resolution 05-10, for a maximum of two years from the date of this extension, subject to the following four conditions:

A. CONDITIONS

1. All terms of Town Council Resolution 05-10 continue in full force unless subsequently modified through the planned development amendment process or through other public hearing zoning change.
2. Development of the project must be consistent with the 3-page Master Concept Plan (MCP) for case #FMBMCP2008-0001, stamped received February 22, 2008.
3. Development must comply with the LDC at the time of local development order approval except for deviations specifically granted in Town Council Resolution 05-10. Approval of this extension of the duration of rights conferred by the MCP adopted by Resolution 05-10 does not guarantee local development order approval. Development must be consistent with the Fort Myers Beach Comprehensive Plan (Comprehensive Plan) at the time of local development order approval, including concurrency requirements.
4. Every activity approved for extension herein must comply with all applicable public health, safety, and welfare standards and regulations, in accordance with Comprehensive Plan Chapter 15.

FINDINGS AND CONCLUSIONS

The Town Council makes the following findings and reaches the following conclusions:

1. As conditioned, the MCP for the subject property is consistent with the LDC and the current Comprehensive Plan, including, but not limited to, density, intensity, and concurrency requirements; and

*By relying on LDC Section 34-94 to implement the recommendations of the FLUEDRA special magistrate, in May, 2005, the Town Council found that the MCP met all the specific requirements of Comp Plan **Policy 4-B-4** concerning the Mixed Residential FLUM category (which would include the density limit of 6 units per acre). This determination has not changed since that time and the MPC is consistent with the LDC as modified since the original approval.*

2. As conditioned, the development shown by the MCP has not become incompatible with existing and proposed uses in the surrounding area as the

result of development approvals issued after the original approval of the master concept plan; and

The surrounding area has changed in character since May 2005, but development approvals currently in place are not incompatible with the development shown in the MCP. The following development approvals have been granted since May, 2005: a commercial office building at 6231 Estero Boulevard (now known as the "Esterra" building), and a fire station (Fort Myers Beach Fire Control District Station 33) at 121 Lenell Road, currently under construction. The immediate vicinity includes existing condominium buildings of various sizes—some of which exceed the proposed building's four stories and twelve dwelling units—and a mix of commercial uses including some small office buildings and a shopping center (Santini Plaza).

3. The development shown by the Master Concept Plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.

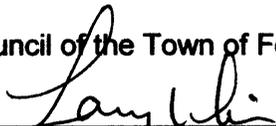
Through concurrency requirements and the development review process, the development will be required to bear its share of any necessary upgrades to public facilities.

The foregoing Resolution was adopted upon a motion by Council Member Raymond and seconded by Council Member List. Upon being put to a vote, the result was as follows:

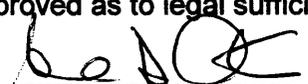
Herb Acken	<u>aye</u>	Tom Babcock	<u>absent</u>
Larry Kiker	<u>aye</u>	Jo List	<u>aye</u>
Bob Raymond	<u>aye</u>		

DULY ADOPTED THIS 26th day of August, 2008.

Town Council of the Town of Fort Myers Beach

BY: 
Larry Kiker, Mayor

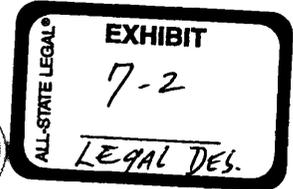
Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
Town Attorney

ATTEST.

By: 
Michelle D. Mayher, Town Clerk

EXHIBIT II-B-1
LEGAL DESCRIPTION



LEGAL DESCRIPTION

RPD PARCEL (RIGHT-OF-WAY TO SETBACK LINE)

A LOT OR PARCEL OF LAND 180 FEET WIDE IN GOVERNMENT LOT 4, SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST, EXTENDING FROM ESTERO BOULEVARD (STATE ROAD S-865) TO THE 1978 COASTAL CONSTRUCTION SETBACK LINE AS RECORDED IN ORDINANCE 76-3, WHICH LOT OR PARCEL IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF A LINE 690 FEET, MEASURED ON A PERPENDICULAR SOUTHEASTERLY FROM AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, McPHIE PARK SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. S-865 RUN SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 181.93 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE 870 FEET SOUTHEASTERLY FROM AND PARALLEL WITH SAID SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, McPHIE PARK SUBDIVISION; THENCE RUN SOUTHWESTERLY ALONG SAID PARALLEL LINE 404.55' TO SAID 1978 COASTAL CONSTRUCTION SETBACK LINE; THENCE RUN NORTH 29°18'12" WEST, ALONG SAID SETBACK LINE, 56.90 FEET TO COASTAL CONSTRUCTION SETBACK LINE CONTROL MONUMENT "E-29"; THENCE RUN NORTH 39°10'40" WEST, ALONG SAID SETBACK LINE, 123.82 FEET TO AN INTERSECTION WITH A LINE THROUGH THE POINT OF BEGINNING, PARALLEL WITH SAID SOUTHEASTERLY LINE OF BLOCK "I"; THENCE RUN NORTHEASTERLY ALONG SAID PARALLEL LINE 420.67 FEET TO THE POINT OF BEGINNING TOGETHER WITH ALL RIPARIAN RIGHTS APPURTENANT THERETO.

CONTAINING 1.690 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

BEARINGS ARE GRID BEARINGS FLORIDA STATE PLANE WEST ZONE, NORTH AMERICAN DATUM OF 1986, 1990 ADJUSTMENT (NAD 83(90)).

ENVIRONMENTALLY CRITICAL PARCEL (EC)

A LOT OR PARCEL OF LAND 180 FEET WIDE IN GOVERNMENT LOT 4, SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST, EXTENDING FROM THE 1978 COASTAL CONSTRUCTION SETBACK LINE AS RECORDED IN ORDINANCE 76-3, TO THE WATERS OF THE GULF OF MEXICO, WHICH LOT OR PARCEL IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF A LINE 690 FEET, MEASURED ON A PERPENDICULAR SOUTHEASTERLY FROM AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, McPHIE PARK SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 8, PAGE 59, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. S-865 RUN SOUTHEASTERLY ALONG SAID RIGHT-OF-WAY LINE FOR 181.93 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE 870 FEET SOUTHEASTERLY FROM AND PARALLEL WITH SAID SOUTHEASTERLY LINE OF BLOCK "I", UNIT 2, McPHIE PARK SUBDIVISION; THENCE RUN SOUTHWESTERLY ALONG SAID PARALLEL LINE 404.55 FEET TO SAID 1978 COASTAL CONSTRUCTION SETBACK LINE AND THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID PARALLEL LINE 603.69 FEET MORE OR LESS TO THE WATERS OF THE GULF OF MEXICO; THENCE RUN NORTH 30°18'02" WEST, ALONG SAID WATERS, 138.21 FEET; THENCE NORTH 21°02'47" WEST, ALONG SAID WATERS, TO AN INTERSECTION WITH A LINE THROUGH THE POINT OF COMMENCEMENT, PARALLEL WITH SAID SOUTHEASTERLY LINE OF BLOCK "I"; THENCE RUN NORTHEASTERLY ALONG SAID PARALLEL LINE 577.91 FEET TO SAID 1978 COASTAL CONSTRUCTION SETBACK LINE; THENCE SOUTH 39°10'40" EAST, ALONG SAID SETBACK LINE 123.82 FEET TO 1978 COASTAL CONSTRUCTION SETBACK LINE CONTROL MONUMENT "E-29"; THENCE SOUTH 29°18'12" EAST, ALONG SAID SETBACK LINE, 56.90 FEET TO THE POINT OF BEGINNING; TOGETHER WITH ALL RIPARIAN RIGHTS APPURTENANT THERETO.

CONTAINING 2.466 ACRES MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

BEARINGS ARE GRID BEARINGS FLORIDA STATE PLANE WEST ZONE, NORTH AMERICAN DATUM OF 1986, 1990 ADJUSTMENT (NAD 83(90)).