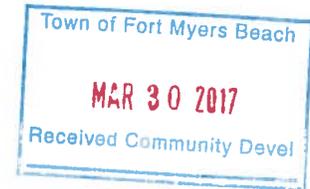


**TPI-FMB**  
**Commercial Planned Development**  
Decision-Making Compliance

The proposed redevelopment of the Time Square Resorts property is consistent with the decision making compliance requirements of the Town's Land Development code. Each item is individually addressed with details for review below.

## Sec. 34-85. Rezoning.

- (1) **Function.** The town council shall hear and decide all applications for changes in zoning district boundaries.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following, whenever applicable:

- a. Whether there exists an error or ambiguity which must be corrected.  
**The subject property is currently within two zoning districts, Downtown and Commercial Planned Development. The existing CPD was approved by Z-02-07 in 2002. Section 34-220(1) establishes that an approved master concept plan and its attendant documentation "shall be deemed to be vacated unless the property owner obtains a development order for the first phase of the project within three years of the date of the original approval by town council."**

**No evidence of a Development Order has been identified by the applicant and therefore it appears that the previously approved MCP has been vacated since 14 years have passed since the time of the original approval.**

**LDC Section 34-220(4) also establishes that when any portion of a master concept plan is vacated "the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved..."**

**Due to this regulation, a public hearing must be held to re-establish the ability to develop the portion of the subject property north of Estero Boulevard. Without such a hearing, development cannot occur on the subject property due to 34-220(4) which is an ambiguity that needs to be corrected for the property to reach its full redevelopment potential.**

**The applicant has chosen to incorporate the existing CPD with the additional lands they have acquired to present a unified redevelopment plan for the subject property and to permit a comprehensive review of the proposal.**

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

**Since the implementation of the Town's Comprehensive Plan and Land Development Code, the Flood Zone Maps for the Town of Fort Myers Beach have been updated. As of August 2008, a majority of the subject property has been included within a Velocity zone, which requires the elevation of new buildings to above the base flood elevation (BFE) and prohibits the enclosure of space below BFE.**

**The requested CPD seeks to redevelop the subject property to bring a majority of the property into compliance with BFE and building code requirements for construction within the Velocity Zone. Without the consideration of the current Federal Requirements for development within the Velocity Zone, the subject property cannot be redeveloped consistent with ground level vision of development for the Downtown Core District.**

**Furthermore, the proposed development aggregates multiple properties on the Bay Side and Gulf Side of Estero to provide a unique redevelopment opportunity. The proposed development clusters a majority of the requested development on the Bay Side property, which permits new open view corridors along the Gulf Side. Without the aggregation of the subject property and the clustering of development, these new view corridors would not be possible.**

**The requested CPD and proposed site design works to address the inconsistencies of the Town's regulations with the Federal requirements for development within a Velocity Zone while providing increased opportunities for public gathering, access and view corridors along the Gulf. These opportunities are only available due to the aggregation of the properties.**

- c. The impact of a proposed change on the intent of this chapter.

**The requested CPD development will not change the intent of Town's Land Development Code.**

**It is important to note that should another property owner desire to make the same request as TPI-FMB, LLC they would be required to prepare an application for a Commercial Planned Development, propose the specific**

uses desired, request any necessary deviations AND hold public hearings with the Local Planning Agency and Town Council.

The requested CPD may only be approved after review and approval by the Town Council which provides ample opportunity for public input and evaluation for consistency with the Town's regulations.

Included in the CPD application materials provided by TPI-FMB, LLC is a detailed project narrative, consistency with the comprehensive plan narrative and deviations and justifications narrative. These documents along with the schedule of uses and master concept demonstrate that the proposed development will not change the intent of the Chapter 34 of the Town's Land Development Code.

- d. The testimony of any applicant.

The applicant's professional consultants have supported the preparation of the materials supporting the CPD. Additional verbal testimony will be provided during future public hearings with the Town's Local Planning Agency and Council.

- e. The recommendation of staff and of the local planning agency.

The applicant's professional consultants have meet with staff. However a formal review and recommendation must be held until the application is submitted to the town for review with the appropriate fees. It is expected that a recommendation will be provided by staff and the LPA members after sufficiency review of the application.

- f. The testimony of the public.

The applicant's professional consultants have held many meetings with various residents, public organizations, business owners, etc. However a formal review and recommendation by Town staff and the LPA must be held until the application is submitted to the town for review with the appropriate fees. Members of the public may provide comments during the sufficiency review process as well as testimony during the public hearing process which will occur after the submittal of the application.

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

**This proposed development and requested CPD zoning is consistent with the goals, objectives, policies, and intent of the Town's Comprehensive Plan. A detailed analysis of this consistency is provided in the attached narrative entitled "Consistency with Comprehensive Plan."**

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

**The Site is located at the base of Matanzas Pass Bridge, at the intersection of San Carlos Boulevard and Estero Boulevard, which is within the Downtown Core of Fort Myers Beach. The property has a future land use designation of Pedestrian Commercial, which is the most intense commercial FLU category available within the Town. The proposed development has been designed to be consistent with the regulations of the Downtown zoning district and commercial design standards. No relief is requested from the regulations of the Town related to setback, build to lines, height, massing, or design standards. Therefore, the request meets or exceeds the performance and locational standards of the Town's regulations.**

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

**The parcels, currently commercially developed, have a full range of urban services available. Potable water is provided by the Town and sanitary sewer is provided by Lee County Utilities. Lee Tran provides a bus route and trolley service on the island. Police protection and emergency services are provided by Lee County. A detailed analysis of urban services is also provided in the attached project narrative.**

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

**Redevelopment is requested for the subject property – no environmentally critical areas or natural resources exist on the subject property currently.**

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

**The request is compatible with the existing land uses surrounding the subject site, and is expected to have a positive effect upon other properties in the area. A detailed analysis of surrounding land uses and compatibility is provided in the attached project narrative.**

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

**The project plans include several design elements, as well as service elements, that will alleviate the existing transportation issues. Specifically the proposed redevelopment will reduce the peak hour trips associated with the property from the current existing and approved development. The elimination of access points along Estero Boulevard will improve vehicular traffic circulation off the Matanzas Bridge and down Estero Boulevard. The elimination of a pedestrian crossing at grade and two Pedestrian Overpasses will eliminate pedestrian and vehicular conflicts and improve vehicular flow on Fifth Street and Estero Boulevard. In addition, the proposal will provide a trolley drop off at the intersection of Fifth and Crescent Streets further improving vehicular circulation and multi-modal options for transportation. A detailed traffic impact statement and consistency with the transportation element of the comprehensive plan are attached to this application for review.**

- m. For planned development re-zonings, see § 34-216 for additional considerations.

34-216(a)(2) The recommendation made to the Town Council must be supported by the guidelines set forth in 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied.

- a. The proposed use or mix of uses is appropriate at the subject location;

**The subject property is located within the Pedestrian Commercial Future Land Use and the Downtown core of the Town of Fort Myers Beach. These categories are envisioned to be for the most intense commercial development within the Town.**

**The proposed uses and request intensity are less than the maximum 1.4 Floor Area Ratio permitted and land uses permitted within the downtown zoning district. In the proximity of the subject property are existing hotels, restaurants and public gathering spaces similar to the requested development. The proposed architectural design and layout of the proposed structures provide further separation and elimination of negative impacts to adjacent properties.**

**Additional details regarding the compatibility of the requested uses with the surrounding properties is provided in the attached project narrative.**

- b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

**The applicant has proposed initial limitations through the schedule of uses and Master Concept Plan to appropriately protect the public interest.**

**The applicant welcomes additional conversations on this particular item during Town Staff's review of the proposed application and request.**

- c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

**The applicant will commit to working with the Town's Staff, Local Planning Agency and Council to address recommended special conditions.**

- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

**The applicant has provided a detailed analysis regarding the proposed development's consistency with the Town's Comprehensive Plan attached to this application.**

- 1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

**The subject property is not within the mixed residential future land use.**

- 2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

**The subject property is not within the boulevard future land use.**

- 3. Policy 4-C-4 on building heights taller than the standard height limit.

**The requested CPD rezoning does not include a request for building heights taller than the standard limit as identified by LDC Section 34-675(b)(3).**

- 4. Policy 4-C-8 on density transfers.

**The requested CPD rezoning does not include a density transfer.**

- 5. Policy 4-E-1 on pre-disaster buildback.

**The requested CPD rezoning does not include a request for pre-disaster buildback.**

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

**The requested CPD rezoning includes a traffic impact statement which addresses and any necessary improvements in detail. The traffic impact statement is attached to this application for review.**