

**1. Requested Motion:**

**Meeting Date: October 21, 2013**

Motion to **APPROVE/DENY** the applicant's request for an amendment to an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members.

**Why the action is necessary:**

The existing signage on the property does not comply with the Sign Ordinance as amended in Ordinance 11-01. Property has road frontage on all 4 sides, but location near foot of Matanzas Pass Bridge makes it difficult for visitors to locate.

**What the action accomplishes:**

Allows the Pink Shell Resort to create a commercial membership program.

**2. Agenda:**

- Consent
- Administrative
- Public Hearing

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other Special Events Permit

**4. Submitter of Information:**

- Council
- Town Staff – Com. Dev.
- Town Attorney

**5. Background:**

Case: DCI2013-0001 Pink Shell CPD Amendment

Beverly Grady, Esq., authorized agent for New Pink Shell, LLC, owner of property located at 171-191, 200, 251-281 & 275/322 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to the existing CPD, known as the Pink Shell CPD, to add 'Recreation, Commercial with membership' to the approved schedule of uses and to allow the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members.

The LPA held a public hearing on the request at their September 17, 2013 meeting. The applicant presented its case then Staff presented our case along with a recommendation for approval of the CPD amendments subject to five conditions. LPA had a question and answer period with the applicant, heard public comment, and asked questions of Staff. Ultimately, the LPA voted 5-0 (Members Shamp and Plummer were excused) to recommend approval of the special exception as requested, including Staff's recommended conditions.

Attachments:

- Tab a - Draft Council Resolution 13-23
- Tab b - LPA Resolution 2013-013
- Tab c - Minutes from the September 17, 2013 LPA meeting
- Tab d - Staff Report
- Tab e – Original Application & sufficiency documents provided on disc

**6. Alternative Action:**

Council denies the requested amendments to the approved CPD

**7. Management Recommendations:**

- Approved the amendments to the CPD as conditioned by Staff and the LPA

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Park & 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 13-23  
DCI2013-0002 Pink Shell CPD Amendment

WHEREAS, Beverly Grady, Esq., authorized agent for New Pink Shell, LLC, owner of property located at 171-191, 200, 251-281 & 275/322 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to the existing CPD, known as the Pink Shell CPD, to add 'Recreation, Commercial with membership' to the approved schedule of uses and allow the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members; and

WHEREAS, the subject property is located in both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers are 24-46-23-W1-00700.0320, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.037A; and

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

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 17, 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 34-212.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 21, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-013, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-212.

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-013 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVE/DENY** the applicant's request for an amendment to an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members subject to the following conditions:

**CONDITIONS OF APPROVAL**

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.*

### **APPROVED DEVIATIONS**

All previously approved deviations have been consolidated into one document, attached as *Exhibit F*.

### **FINDINGS AND CONCLUSIONS**

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, LPA recommends that the Town Council make the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*  
No error or ambiguity exists on the subject property; the application is to request amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests and members on Lots 38 & 39. (see *Exhibit B* for the Master Concept Plan). **APPROVE/DENY**
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*  
The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. This request change the conditions of the approved CPD requires an amendment to the CPD. The applicant suggests that additions of 'Recreation, Commercial with membership' and modifications to parking on Lots 38 & 39 will not result in any negative impacts and will operate essentially in the same manner as currently exists on the subject property. However, Staff remains concerned about the undefined number of memberships and the total number of parking spaces provided. **APPROVE/DENY**
3. *The impact of a proposed change on the intent of this chapter.*  
The proposed amendment to the CPD will implement the provisions found in Section 34-214, procedure for amending planned developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code. **APPROVE/DENY**
4. *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.*  
As discussed in the analysis section of this report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Recreation and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process. **APPROVE/DENY**
5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*  
The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 generally meets all performance and locational standards for the proposed uses. No new structures or

substantial improvements are proposed, nor are any deviations from LDC regulations requested. **APPROVE/DENY**

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

The applicant has indicated that urban services are available and adequate to serve the proposed changes. **APPROVE/DENY**

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

The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources. However, any lighting visible from the beach and/or included on any future plans development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79. **APPROVE/DENY**

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

The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 is compatible with surrounding uses. The applicant is not requesting any new uses just the ability to offer the recreation facilities already existing on the subject property on a commercial membership level. This is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE/DENY**

- 9. *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 existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442. **APPROVE/DENY**

The foregoing Resolution 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 **21st** day of **OCTOBER, 2013**.

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

Approved as to legal sufficiency:

ATTEST:

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

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

EXHIBIT A

LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 2,3,4,5,6,8,9 AND 10 OF GULFSHORE, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

LOTS 34,35, AND 36 AND NORTHWESTERLY 25 FEET OF LOT 33 OF UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 29 THROUGH 32 AND THE NORTHWEST 1/2 OF LOT 28, OF BLOCK "D", UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. LOTS 33,34,35,36,38 AND 39, BLOCK "D", ISLAND SHORES CLUB SECTION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 37 THROUGH 42 OF ISLAND SHORES CLUB SECTION, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LESS ANY PORTION THEREOF LYING BELOW THE MEAN HIGH TIDE LINE OF THE MANTANZAS PASS AND THE EROSION CONTROL LINE OF THE GULF OF MEXICO.

LESS AND EXCEPT THE FOLLOWING:

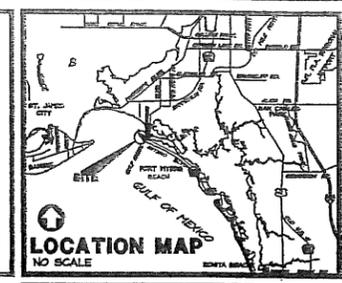
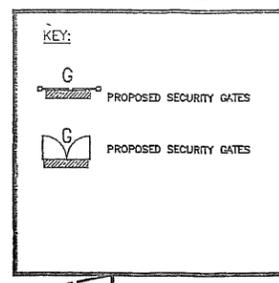
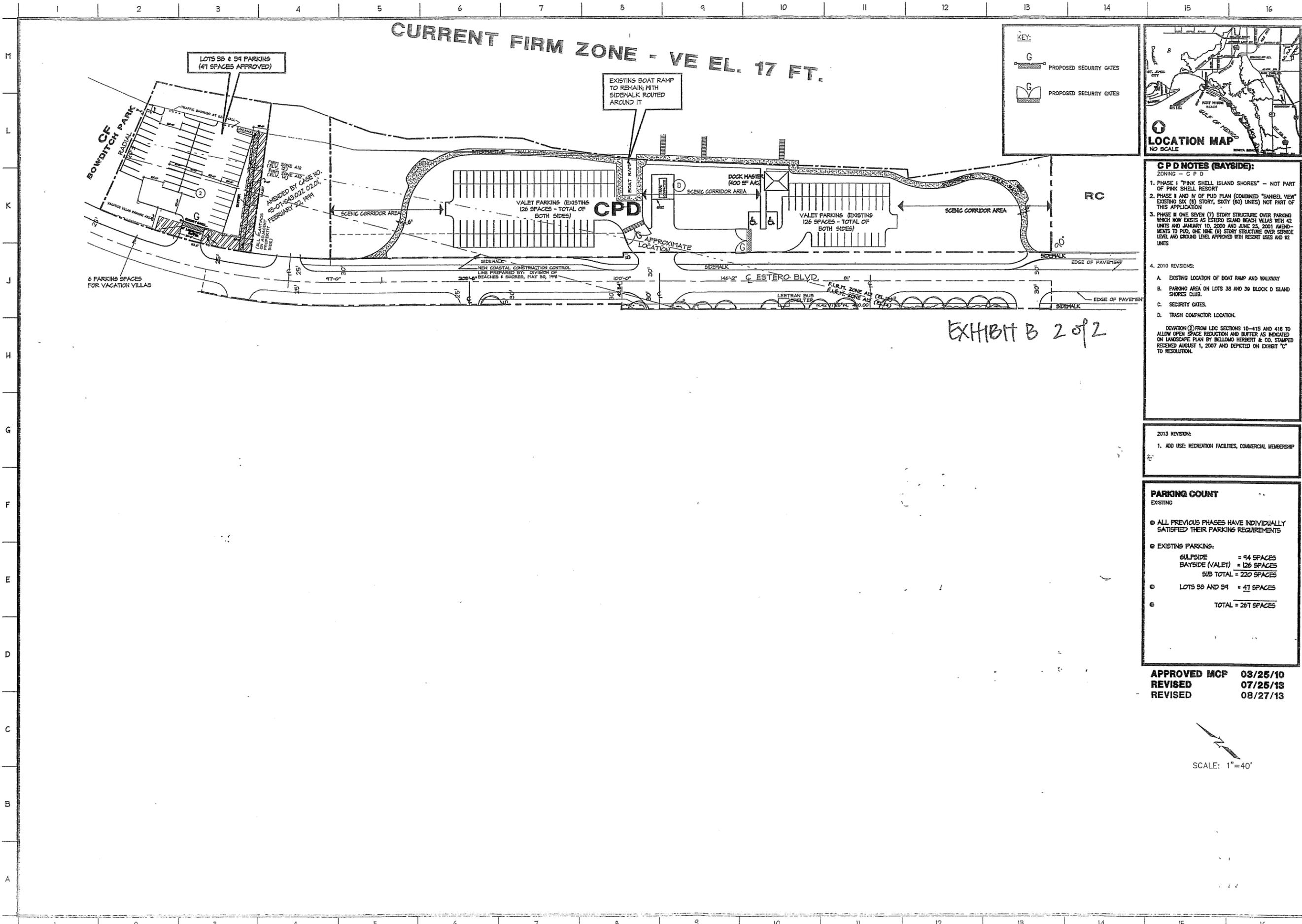
A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA ALSO BEING PART OF LOTS 2,3,4,8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88 ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 233.95 FEET TO A POINT ON THE EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.34°48'21"E. ALONG SAID EROSION CONTROL LINE FOR 40.76 FEET; THENCE S.37°26'30"E. FOR 108.35 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 2; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE FOR 351.39 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPT SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 3559, PAGE 222 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND WHITE SAND VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 4203, PAGE 2100 OF SAID PUBLIC RECORDS.



**CURRENT FIRM ZONE - VE EL. 17 FT.**



**CP D NOTES (BAYSIDE):**  
ZONING - C P D

- PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
- PHASE II AND IV OF PUD PLAN (COMBINED "SANGEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
- PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SPACE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS

2010 REVISIONS:

- EXISTING LOCATION OF BOAT RAMP AND WALKWAY
- PARKING AREA ON LOTS 38 AND 39 BLOCK D ISLAND SHORES CLUB.
- SECURITY GATES.
- TRASH COMPACTOR LOCATION.

NOTATION (C) FROM LDC SECTIONS 10-415 AND 416 TO ALLOW OPEN SPACE REDUCTION AND BUFFER AS INDICATED ON LANDSCAPE PLAN BY BELLOMO HERBERT & CO. STAMPED AUGUST 1, 2007 AND DEPICTED ON EXHIBIT "C" TO RESOLUTION.

2013 REVISION:

- ADD USE: RECREATION FACILITIES, COMMERCIAL MEMBERSHIP

**PARKING COUNT**  
EXISTING

ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS

EXISTING PARKING:

• GULFSIDE	= 44 SPACES
• BAYSIDE (VALET)	= 126 SPACES
• SUB TOTAL	= 220 SPACES
• LOTS 38 AND 39	= 41 SPACES
• TOTAL	= 261 SPACES

APPROVED MCF 03/25/10  
 REVISED 07/25/13  
 REVISED 08/27/13

EXHIBIT B 2 of 2

SCALE: 1"=40'

Gora  
**McGahey**  
 ASSOCIATES IN  
 ARCHITECTURE

48 Barkley Circle Suite 202  
 Fort Myers, Florida 33907  
 941-275-0225 Fax 941-275-7123

**PINK SHELL C P D  
 BAY SIDE  
 MASTER CONCEPT PLAN**

JOB NO. 95011

Deviations – 2001 Captiva Villas – Resolution 01-26

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

B. DEVIATIONS – 2010 Gulfside – Resolution 10-05

## Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The

remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council APPROVES Deviation #2.

B. DEVIATIONS – 2010 Bayside – Resolution 10-06

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.

SCHEDULE OF USES  
(Underling depicts new uses)

**Residential**

- Principal:
  - Dwelling unit, single-family (one existing cottage only)
  - Dwelling unit, two family (on existing cottage only)
  - Dwelling unit, multi-family (92 existing units in White Sands Villas only)
  - Group Quarters (See condition 6 Resolution 10-05)
- Accessory:
  - Residential accessory uses

**Lodging**

- Principal:
  - Hotel/motel (43 existing guest units in Captiva Villas only)
  - Rental of any permitted dwelling unit for periods of one day or longer
  - Resort
  - Timeshare units
- Accessory:
  - Resort accessory uses, including:
    - Parking
    - Rental of beach furniture and cabanas
    - Boat rental
    - Charter and tour boats
    - Personal watercraft operations office
    - Parasailing operations office
    - Sailing office
    - Docks for use by water taxi or water shuttle (See Condition 7 Resolution 10-06)
    - Meeting space
    - Kids camp and crafts
    - Signs
    - Business center
  - Subordinate commercial uses

**Office**

- Principal:
  - NONE
- Accessory:
  - Administrative Office
  - Home occupation (no outside help)
  - Commercial accessory uses

**Retail**

- Principal:
  - Recreational facilities – commercial, in conjunction with a membership\*
  - Subordinate commercial uses including restaurant, personal services, retail store (small)
- Accessory:
  - ATM
  - On-premises and package sale for off-premise consumption of alcoholic beverages

**Marine**

- Principal:
  - NONE
- Accessory:
  - Dock (for lease to non-occupants of the principal use)
  - Dock (for use by resort occupants)

**Civic**

- Principal:
  - Beach or bay access
  - Essential services
  - Essential service equipment
  - Park, neighborhood

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2013-013  
DCI2013-0002 Pink Shell CPD Amendment

WHEREAS, Beverly Grady, Esq., authorized agent for New Pink Shell, LLC, owner of property located at 171-191, 200, 251-281 & 275/322 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to the existing CPD, known as the Pink Shell CPD, to add 'Recreation, Commercial with membership' to the approved schedule of uses and allow the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members; and

WHEREAS, the subject property is located in both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers are 24-46-23-W1-00700.0320, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.037A; and

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

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 17, 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 34-212.

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 Commercial Planned Development (CPD) amendments, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for an amendment to an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL**

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.

#### **RECOMMENDED APPROVED DEVIATIONS**

All previously approved deviations have been consolidated into one document, attached as *Exhibit F*.

#### **RECOMMENDED FINDINGS AND CONCLUSIONS**

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, LPA recommends that the Town Council make the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*  
No error or ambiguity exists on the subject property; the application is to request amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests and members on Lots 38 & 39. (see *Exhibit B* for the Master Concept Plan). **APPROVE**
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*  
The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. This request change the conditions of the approved CPD requires an amendment to the CPD. The applicant suggests that additions of 'Recreation, Commercial with membership' and modifications to parking on Lots 38 & 39 will not result in any negative impacts and will operate essentially in the same manner as currently exists on the subject property. However, Staff remains concerned about the undefined number of memberships and the total number of parking spaces provided. **APPROVE**
3. *The impact of a proposed change on the intent of this chapter.*  
The proposed amendment to the CPD will implement the provisions found in Section 34-214, procedure for amending planned developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code. **APPROVE**
4. *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.*  
As discussed in the analysis section of this report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Recreation and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process. **APPROVE**

5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*  
The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' ad to modify allowable parking on Lots 38 & 39 generally meets all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, nor are any deviations from LDC regulations requested. **APPROVE**
6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*  
The applicant has indicated that urban services are available and adequate to serve the proposed changes. **APPROVE**
7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*  
The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources. However, any lighting visible from the beach and/or included on any future plans development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79. **APPROVE**
8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*  
The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 is compatible with surrounding uses. The applicant is not requesting any new uses just the ability to offer the recreation facilities already existing on the subject property on a commercial membership level. This is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**
9. *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 existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442. **APPROVE**

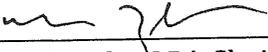
*The remainder of this page intentionally left blank*

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Smith** and seconded by LPA Member **Kakatsch**, 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 **17th** 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

EXHIBIT A

LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 2,3,4,5,6,8,9 AND 10 OF GULFSHORE, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

LOTS 34,35, AND 36 AND NORTHWESTERLY 25 FEET OF LOT 33 OF UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 29 THROUGH 32 AND THE NORTHWEST 1/2 OF LOT 28, OF BLOCK "D", UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. LOTS 33,34,35,36,38 AND 39, BLOCK "D", ISLAND SHORES CLUB SECTION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 37 THROUGH 42 OF ISLAND SHORES CLUB SECTION, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LESS ANY PORTION THEREOF LYING BELOW THE MEAN HIGH TIDE LINE OF THE MANTANZAS PASS AND THE EROSION CONTROL LINE OF THE GULF OF MEXICO.

LESS AND EXCEPT THE FOLLOWING:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA ALSO BEING PART OF LOTS 2,3,4,8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88 ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.78 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 233.95 FEET TO A POINT ON THE EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE, COUNTY, FLORIDA; THENCE S.34°48'21"E. ALONG SAID EROSION CONTROL LINE FOR 40.76 FEET; THENCE S.37°26'30"E. FOR 108.35 FEET TO THE SOUTHEREASTERLY LINE OF SAID LOT 2; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE FOR 351.39 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPT SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 3559, PAGE 222 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND WHITE SAND VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 4203, PAGE 2100 OF SAID PUBLIC RECORDS.

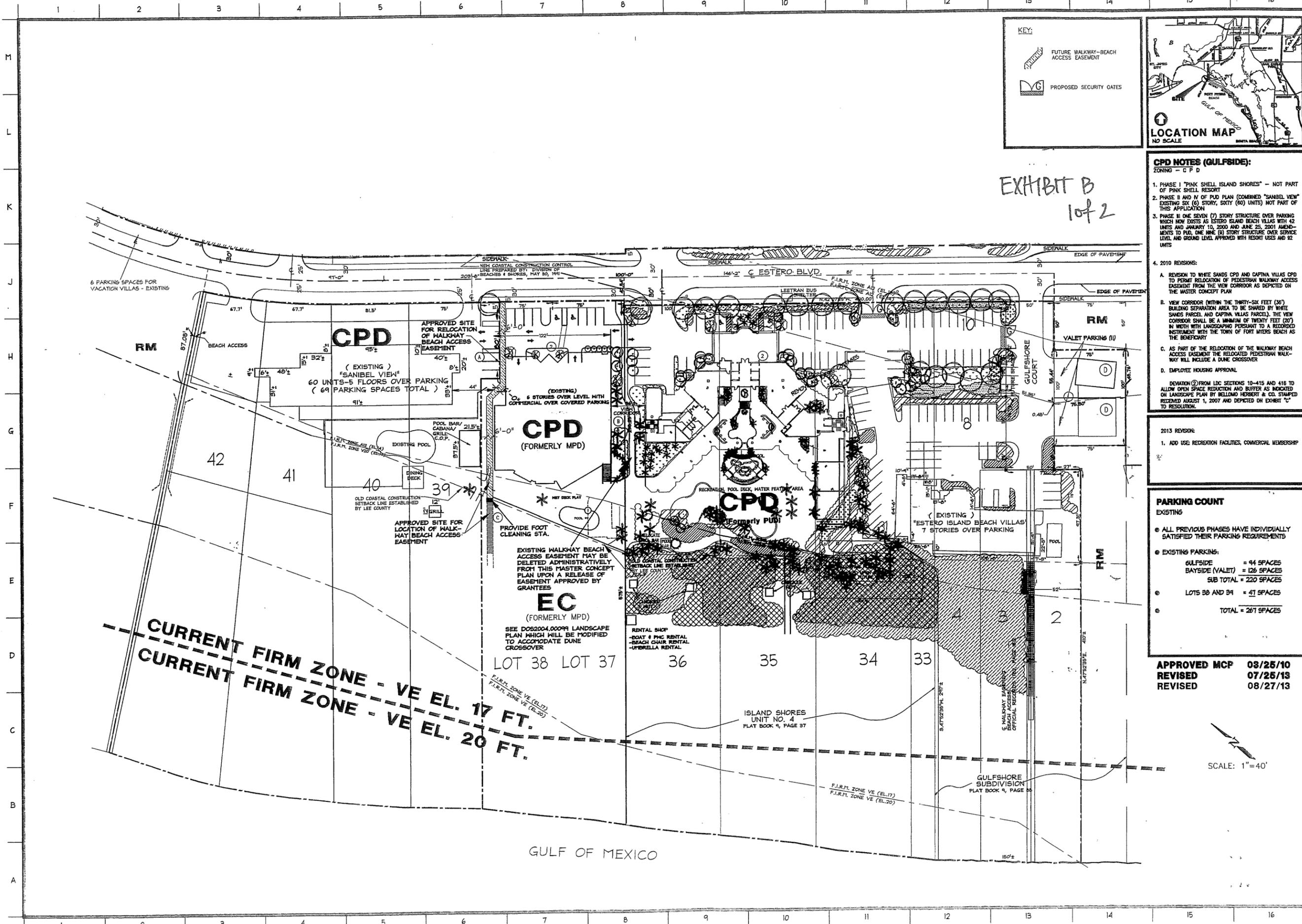
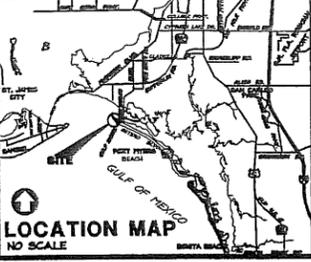
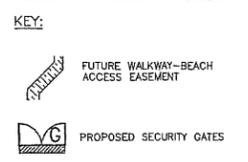


EXHIBIT B  
1072



**CPD NOTES (GULFSIDE):**  
ZONING - C P D

- PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
- PHASE II AND IV OF PUD PLAN (COMBINED "SANIBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
- PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAGES WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS
- 2010 REVISIONS:
  - REVISION TO WHITE SANDS CPD AND CAPTIVA VILLAGES CPD TO PERMIT RELOCATION OF PEDESTRIAN WALKWAY ACCESS EASEMENT FROM THE VIEW CORRIDOR AS DEPICTED ON THE MASTER CONCEPT PLAN
  - VIEW CORRIDOR (WITHIN THE THIRTY-SIX FEET (36') BUILDING SEPARATION AREA TO BE SHARED BY WHITE SANDS PARCEL AND CAPTIVA VILLAGES PARCEL), THE VIEW CORRIDOR SHALL BE A MINIMUM OF TWENTY FEET (20') IN WIDTH WITH LANDSCAPING PURSUANT TO A REDORDED INSTRUMENT WITH THE TOWN OF FORT MYERS BEACH AS THE BENEFICIARY
  - AS PART OF THE RELOCATION OF THE WALKWAY BEACH ACCESS EASEMENT THE RELOCATED PEDESTRIAN WALKWAY WILL INCLUDE A DUNE CROSSOVER
  - EMPLOYEE HOUSING APPROVAL

REVISION © FROM LDC SECTIONS 10-415 AND 416 TO ALLOW OPEN SPACE REDUCTION AND BUFFER AS INDICATED ON LANDSCAPE PLAN BY BELLOMO HERBERT & CO. STAMPED RECEIVED AUGUST 1, 2007 AND DEPICTED ON EXHIBIT "C" TO RESOLUTION.

2013 REVISION:

- ADD USE RECREATION FACILITIES, COMMERCIAL MEMBERSHIP

**PARKING COUNT**  
EXISTING

• ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS

• EXISTING PARKING:

GULFSIDE	= 94 SPACES
BAYSIDE (VALET)	= 126 SPACES
SUB TOTAL	= 220 SPACES
• LOTS B8 AND B9	= 47 SPACES
• TOTAL	= 267 SPACES

APPROVED MCP 03/25/10  
REVISED 07/25/13  
REVISED 08/27/13

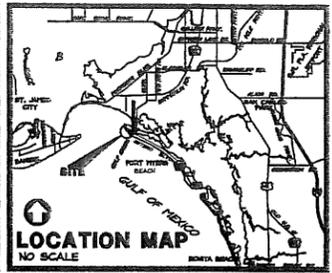
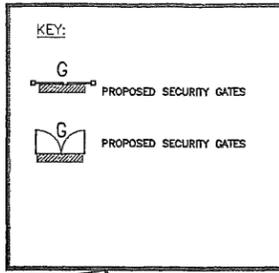
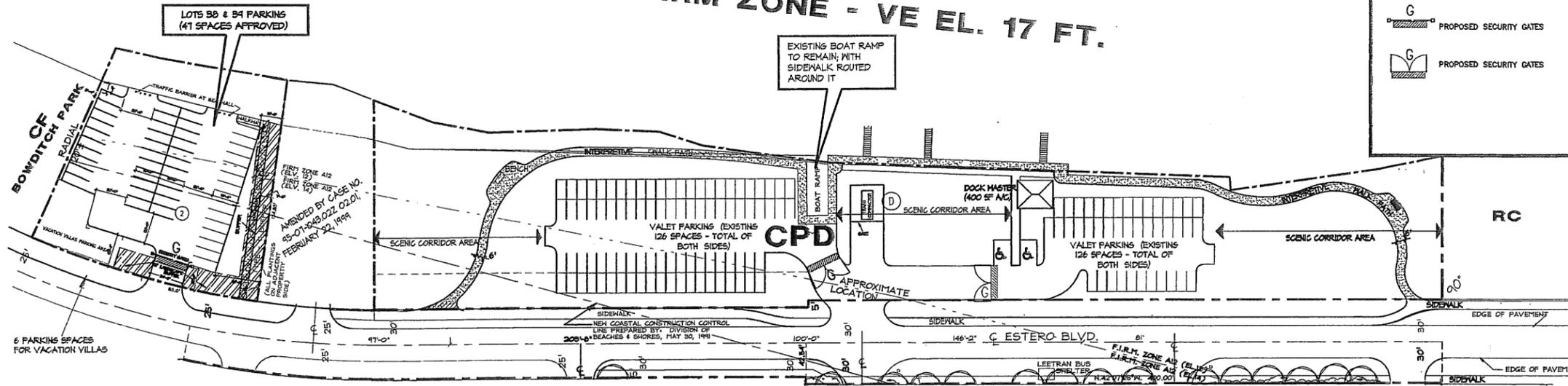
Gora  
McGahey  
ASSOCIATES IN  
ARCHITECTURE

43 Barkley Circle Suite 202  
Fort Myers, Florida 33907  
941-275-0225 Fax 941-275-7123

**PINK SHELL C P D  
GULF SIDE  
MASTER CONCEPT PLAN**

JOB NO. 98011  
SP-gs

**CURRENT FIRM ZONE - VE EL. 17 FT.**



**CPD NOTES (BAYSIDE):**  
ZONING - C P D

- PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
- PHASE II AND IV OF PUD PLAN (COMBINED "SUNBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
- PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS
- 2010 REVISIONS:
  - EXISTING LOCATION OF BOAT RAMP AND WALKWAY
  - PARKING AREA ON LOTS 38 AND 39 BLOCK D ISLAND SHORES CLUB.
  - SECURITY GATES.
  - TRASH COMPACTOR LOCATION.

DEVIATION (2) FROM LDC SECTIONS 10-415 AND 416 TO ALLOW OPEN SPACE REDUCTION AND BUFFER AS INDICATED ON LANDSCAPE PLAN BY BELLIAMO HERBERT & CO. STAMPED RECEIVED AUGUST 1, 2007 AND DEPICTED ON EXHIBIT "C" TO RESOLUTION.

2013 REVISION:  
1. ADD USE: RECREATION FACILITIES, COMMERCIAL MEMBERSHIP

**PARKING COUNT**  
EXISTING

• ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS

• EXISTING PARKING:

GULFSIDE	= 94 SPACES
BAYSIDE (VALET)	= 126 SPACES
SUB TOTAL = 220 SPACES	
LOTS 58 AND 59	= 41 SPACES
TOTAL = 261 SPACES	

APPROVED MCP 03/25/10  
REVISED 07/25/13  
REVISED 08/27/13



EXHIBIT B 2 of 2

43 Barkley Circle Suite 202  
Fort Myers, Florida 33907  
941-275-0225 Fax 941-275-7123

**Gora McCahey**  
ASSOCIATES IN ARCHITECTURE

**PINK SHELL C P D**  
**BAY SIDE**  
**MASTER CONCEPT PLAN**

JOB NO. 98011  
**SP-58**

LOU JUMALL

Deviations – 2001 Captiva Villas – Resolution 01-26

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

**B. DEVIATIONS – 2010 Gulfside – Resolution 10-05**

## Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The

remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council APPROVES Deviation #2.

B. DEVIATIONS – 2010 Bayside – Resolution 10-06

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.

SCHEDULE OF USES  
(Underling depicts new uses)

**Residential**

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two family (on existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)
- Group Quarters (See condition 6 Resolution 10-05)

Accessory:

- Residential accessory uses

**Lodging**

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare units

Accessory:

Resort accessory uses, including:

- Parking
- Rental of beach furniture and cabanas
- Boat rental
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle (See Condition 7 Resolution 10-06)
- Meeting space
- Kids camp and crafts
- Signs
- Business center
- Subordinate commercial uses

**Office**

Principal:

NONE

Accessory:

- Administrative Office
- Home occupation (no outside help)
- Commercial accessory uses

**Retail**

Principal:

- Recreational facilities – commercial, in conjunction with a membership\*
- Subordinate commercial uses including restaurant, personal services, retail store (small)

Accessory:

- ATM
- On-premises and package sale for off-premise consumption of alcoholic beverages

**Marine**

Principal:

NONE

Accessory:

- Dock (for lease to non-occupants of the principal use)
- Dock (for use by resort occupants)

**Civic**

Principal:

- Beach or bay access
- Essential services
- Essential service equipment
- Park, neighborhood



**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 Champ – 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

  
\_\_\_\_\_  
Signature

End of document.



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

**TYPE OF CASE:** Commercial Planned Development (CPD)  
**CASE NUMBER:** DCI2013-0001  
**LPA HEARING DATE:** September 17, 2013  
**LPA HEARING TIME:** 9:00 AM

**I. APPLICATION SUMMARY**

**Applicant:** New Pink Shell, LLC  
Beverly Grady, Esq, authorized agent

**Request:** Commercial Planned Development (CPD) Amendment to expand the existing CPD, known as Pink Shell Resort CPD, (as amended by Resolution Numbers 10-05 and 10-06) in order to:

1. add 'Recreation, Commercial with membership' to the approved schedule of uses
2. enable use of the parking areas on Lots 38 & 39 for parking for employees, guests and members

**Subject property:** *Exhibit A*

**Physical Address:** 171-191, 200, 251-281 & 275/322 Estero Boulevard

**STRAP #:** 24-46-23-W1-00700.0320  
24-46-23-W1-00700.0330  
24-46-23-W1-00700.0290  
24-46-23-W1-00700.0340  
24-46-23-W1-00700.037A

**FLU:** Mixed Residential  
Recreation

**Zoning:** COMMERCIAL PLANNED DEVELOPMENT (CPD)  
ENVIRONMENTALLY CRITICAL (EC)

**Current use(s):** Resort

Adjacent zoning and land uses:

Northwest: Sanibel View  
Pink Shell Vacation Villas Condos  
Bowditch Park  
  
RESIDENTIAL MULTI-FAMILY (RM)  
COMMUNITY FACILITIES (CF)  
  
Mixed Residential  
Recreation

Southeast: High-rise condominiums  
Single Family Beach Cottages  
  
RESIDENTIAL MULTI-FAMILY (RM)  
COMMERCIAL PLANNED DEVELOPMENT (CPD)  
  
Mixed Residential

Northeast: San Carlos Bay

Southwest: Beach  
ENVIRONMENTALLY CRITICAL (EC)  
Recreation

**II. BACKGROUND AND ANALYSIS**

Background:

The subject property, consisting of parcels located at 171-191 Estero Boulevard, 200 Estero Boulevard, 251-281 Estero Boulevard, and 275/322 Estero Boulevard, is commonly known as the Pink Shell Resort. The Pink Shell Resort is located on the north end of Estero Island, with both Bay front and Gulf front property bisected by Estero Boulevard. Adjacent to the Gulf side of the subject property are established beach cottages dating back to the 60's and 70's and multi-story condo buildings. To the northwest of the resort is Bowditch Point, a Lee County park, and on the Bay side are more beach cottages and single family homes.

The Pink Shell, as a resort, has a history dating back well over half a century and a zoning history almost as long. For a more complete land use history please refer to the applicant's insufficiency responses stamped received on May 24, 2013 and August 2, 2013.

Analysis:

The request of this particular application is to amend the approved schedule of uses to include 'Recreation, Commercial with membership', and to allow parking on Lots 38 and

39 (see *Exhibit B* for the two page Master Concept Plan) for employees, members and guests.

Currently the Town's Land Development Code (LDC) does not provide a definition of 'Recreation, Commercial with membership.' However, the applicant has provided one for consideration:

*Recreation, Commercial with membership*

*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.*

Staff is generally in support of this definition.

The application states that this change will permit Pink Shell recreation facilities to be available to non-guest members, in addition to resort guests, through a "well defined and limited" membership program. The application does not provide any further details on how the memberships will be defined or limited. Staff did, however, notice that the traffic study prepared by TR Transportation Consultants uses 350 as a membership number.

The lack of details involving how the memberships are defined and/or limited causes Staff concern that the membership program could develop into a popular program with Lee County residents both on and off island. A significantly large membership could further strain transportation and other infrastructure. For example, Staff cannot adequately calculate parking requirements for the members without knowing the total number of memberships available. There is not a parking standard in the LDC that addresses this particular use. Staff, therefore, has to assume that the parking analysis was completed using the hotel/motel calculations. This information, however, was not included in the narrative provided by the applicant.

It will be important for the applicant to address the parking and total membership issues at the time of public hearing and additional conditions of any approval may be required.

Resolution 10-06 approved parking on Lots 38 and 39 for employees only. This application is requesting an expansion of the allowable parking on this lot to include employees, members and guests. The applicant did not provide any analysis or narrative of how allowing member and guest parking in these lots may effect any resulting deficiency in employee parking.

Staff has reviewed the traffic analysis provided by the applicant and determined that, based upon the trolley stop provided in front of the facility during the recent the North Estero Road Improvement project, any impacts on Estero Boulevard should be de minimis. Further, the existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442. Under normal circumstances, transportation concurrency would be fully evaluated at the time of Development Order. However, in this instance, since no new facilities are being

proposed and only the 'Recreation, Commercial with membership' is being added to the Schedule of Uses, it is appropriate to evaluate transportation concurrency at this time. Accordingly, it would be appropriate to condition any approval upon appropriate transportation mitigation measures. Since the trolley stop exists and meets the standards specified in LDC Section 10-442, Staff recommends that the appropriate mitigation measures already are in place.

The applicant asserts that since the uses included with the membership program are all recreation in nature, they have essentially been found to be consistent with the Comprehensive Plan through prior approvals.

*Goal 4: To keep Fort Myers Beach a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict.*

*Objective 4-B: FUTURE LAND USE MAP CATEGORIES - Reduce the potential for further overbuilding through a new Future Land Use Map that protects remaining natural and historic resources, preserves the small-town character of Fort Myers Beach, and protects residential neighborhoods against commercial intrusion.*

*Policy 4-B-4 "Mixed Residential": designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the comprehensive plan, and meet the design concepts of the plan and the Land Development Code. These qualities and overall consistency with the comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

The request is in compliance with the Mixed Residential category for the existing Pink Shell Resort. The proposal to allow memberships to use the resort will complement the commercial use of the property.

*Objective 4-C: APPLYING THE FUTURE LAND USE MAP – The Future Land Use Map shall be interpreted in accordance with the following policies.*

*Policy 4-C-2 Commercial Intensity: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (See Policy 4-C-4) or by other provisions of the plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may*

allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5.

The proposal will not increase commercial intensity as measured by Floor Area Ratio, but rather by the number of users of the resort and its accessory uses.

*Policy 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:*

- iii. In the "Mixed Residential category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in the comprehensive plan, and meet the design concepts of the plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.*
  
- vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:*
  - a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise);*
  - b. its physical scale (such as height, and bulk of proposed buildings); and*
  - c. the orientation of buildings and parking.*

*Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.*

The existing hotel/motel beach resort project on the subject property has previously been approved through the Commercial Planned Development process. The planned improvements will also proceed through the planned development rezoning process, as an amendment to the existing CPD. The commercial development will not be expanding into the residential neighborhood, but will be expanding their offerings to additional members of the public who purchase memberships to use the resort amenities.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, Staff makes the following findings and conclusions:

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

No error or ambiguity exists on the subject property; the application is requesting amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests and members on Lots 38 & 39. (see *Exhibit B* for the Master Concept Plan)

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

The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. This requested change to the conditions of the approved CPD requires an amendment to the CPD. The applicant suggests that additions of 'Recreation, Commercial with membership' and modifications to parking on Lots 38 & 39 will not result in any negative impacts and will operate essentially in the same manner as currently exists on the subject property. However, Staff remains concerned about the undefined number of memberships and the total number of parking spaces provided.

3. *The impact of a proposed change on the intent of this chapter.*

The proposed amendment to the CPD will implement the provisions found in Section 34-214, procedure for amending planned developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code.

4. *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.*

As discussed in the analysis section of this report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Recreation and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process.

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

The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 generally meets all performance and locational standards for the proposed uses. No new structures or substantial improvements are proposed, nor are any deviations from LDC regulations requested.

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

The applicant has indicated that urban services are available and adequate to serve the proposed changes.

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

The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources. However, any lighting visible from the beach and/or included on any future development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79.

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

The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 is compatible with surrounding uses. The applicant is not requesting any new uses, just the ability to offer the recreation facilities already existing on the subject property on a commercial membership level.

This is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property.

9. *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 existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442.

#### Requested Deviations:

Because of the complicated land use history of the subject property and with the intent to simplify and condense the variety of land use documents in one place, Staff is consolidating all previously approved deviations into one document, attached as *Exhibit F*. The applicant does not request any new or additional deviations. All deviations approved and in effect from Resolutions 01-26, 10-05 and 10-06 remain in full force and effect. See *Exhibit F* for a completed list of approved deviations.

### **III. RECOMMENDATION**

Taking into consideration the current and existing conditions of this site, Staff recommends **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 & 39 for parking for employees, guests and members. Limitations and conditions are for Town Council to determine at the time of Public Hearing. Should Town Council choose to approve the requested amendment, Staff recommends the approval be subject to the following 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 \_\_\_\_\_, 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.

#### **IV. CONCLUSION**

Amending the CPD to allow commercial recreation memberships and allow guest parking on Lots 38 and 39 is consistent with the Mixed Residential and Recreation future land use categories as contemplated in the Fort Myers Beach Comprehensive Plan. This request would not adversely affect the surrounding properties and would allow the applicant the fullest use of the subject property.

If Town Council finds that the requested use is contrary to the public interest or the health, safety, comfort, convenience, and/or welfare of the citizens of the Town, or that the request is in conflict with the criteria of LDC Section 34-212 regarding Planned Developments, Town Council should deny the request. If Town Council chooses to approve the request, special conditions necessary to protect the health, safety, comfort, convenience, or welfare of the public may be attached if Council finds that such conditions are reasonably related to the requested rezoning. Staff has recommended conditions for the Town Council's convenience and consideration.

Staff recommends **APPROVAL** of the requested rezoning, as conditioned.

#### **Exhibits:**

- Exhibit A – Legal Description
- Exhibit B – Master Concept Plan (2 pages, Pink Shell CPD Gulf Side & Pink Shell CPD Bay Side)
- Exhibit C – Resolution 01-26
- Exhibit D – Resolution 10-05
- Exhibit E – Resolution 10-06
- Exhibit F – Schedule of Deviations
- Exhibit G – Schedule of Uses

# EXHIBIT A

## LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 2,3,4,5,6,8,9 AND 10 OF GULFSHORE, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

LOTS 34,35, AND 36 AND NORTHWESTERLY 25 FEET OF LOT 33 OF UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 29 THROUGH 32 AND THE NORTHWEST 1/2 OF LOT 28, OF BLOCK "D", UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. LOTS 33,34,35,36,38 AND 39, BLOCK "D", ISLAND SHORES CLUB SECTION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 37 THROUGH 42 OF ISLAND SHORES CLUB SECTION, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LESS ANY PORTION THEREOF LYING BELOW THE MEAN HIGH TIDE LINE OF THE MANTANZAS PASS AND THE EROSION CONTROL LINE OF THE GULF OF MEXICO.

LESS AND EXCEPT THE FOLLOWING:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA ALSO BEING PART OF LOTS 2,3,4,8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88 ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 233.95 FEET TO A POINT ON THE EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE, COUNTY, FLORIDA; THENCE S.34°48'21"E. ALONG SAID EROSION CONTROL LINE FOR 40.76 FEET; THENCE S.37°26'30"E. FOR 108.35 FEET TO THE SOUTHEREASTERLY LINE OF SAID LOT 2; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE FOR 351.39 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPT SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 3559, PAGE 222 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND WHITE SAND VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 4203, PAGE 2100 OF SAID PUBLIC RECORDS.

EXHIBIT C

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 01-26

WHEREAS, Boykin Hotel Properties, L.P. in reference to Captiva Useppa Property has filed a request to rezone from RM-2 to Mixed Planned Development (MPD) to permit a maximum of 43 hotel/time share units, accessory uses and limited consumption on premises, not to exceed 72 feet in height above base flood elevation on 1.84 total acres of land; and,

WHEREAS, this request was amended to request a maximum of 43 hotel units, accessory uses and 12,000, square feet of commercial uses (transferred from the bayside) with consumption on the premises, not to exceed 83 feet in height above base flood elevation; and,

WHEREAS, the subject property is located in Section 24, Township 46 South, Range 23 East, Lee County, Florida, at 275 Estero Blvd., Fort Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is: 24-46-23-W1-00700.0350; and,

WHEREAS, a public hearing was held before the Local Planning Agency who found:

1. The Applicant has proven entitlement to the rezoning by demonstrating compliance with the Town's Comprehensive Plan, the Land Development Code and other applicable codes and regulations.
2. The requested zoning does meet or exceed all performance and locational standards set forth for the potential uses allowed by the request and is consistent with the densities, intensities and general uses set forth in the comprehensive Plane. Further the deviations sought do enhance the objectives of the planned development.

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exist changed or changing conditions that make approval of the request appropriate.
- b. The testimony of any applicant.
- c. The recommendation of staff.
- d. The testimony of the public.
- e. Whether the request is consistent with the goals, objectives, policies and intent of the Town Plan.
- f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.
- h. Whether the request will be compatible with existing or planned uses.
- i. Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.

- j. Whether a requested use will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

Conditions of Approval

1. The development of this project must be consistent with the one page Master Concept Plan entitled "Pink Shell MPD", last revised 7/30/01 and stamped "Received Permit Counter August 9, 2001", except as modified by the conditions below.
  2. a. Schedule of Uses
    - Accessory Uses and Structures
      - Conference/Meeting Rooms
      - Guest Services
    - Administrative Office
    - Consumption on Premises (see Condition 10)
    - Essential Services
    - Food and Beverage Service, limited
    - Hotel
    - Parking – Accessory
    - Resort
    - Restaurant Groups II & III
      - Deli
    - Signs in accordance with LDC Chapter 30
    - Specialty Retail Group I
  - b. Maximum Uses
    - 43 Hotel Units
- Accessory Commercial Hotel Uses
- 1,300 SF Administrative/Offices
  - 6,000 SF Restaurant/Deli/Retail
  - 2,500 SF Guest Services
  - 2,200 Conference/Meeting/Limited Food & Beverage Service
- In no case will the total commercial use exceed **12,000 SF**
3. A maximum of 43 hotel units are approved, to be constructed within 7 stories over one ground floor of parking only. The first floor is dedicated to the approved commercial uses. Floors 2-7 will accommodate the hotel units only. The total

square footage of the 43 hotel units will not exceed 28,219 square feet of air conditioned living area.

4. This development must comply with all requirements of the Town of Fort Myers Beach LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
5. Prior to the issuance of a local development order the Pink Shell CPD located on the bayside parcel, amended in Fort Myers Beach Resolution 00-07/07A, must be amended to remove 12,000 SF of commercial uses. The only commercial uses which will remain in the approved schedule are the accessory parking and uses related to the operation of the boat slips and dockage. The building housing the existing commercial uses shall be removed promptly following occupancy. The Master Concept Plan for the bayside CPD must be amended to be consistent with the development plan adopted in Condition #1.
6. Prior to issuance of a local development order the applicant will record an approved document in the Lee County Official Records which grants a 6 foot wide beach access easement to the public, and preserves a 36' foot wide view corridor as depicted on the approved Master Concept Plan. Parking is allowed within the 36' as depicted on the Master Concept Plan, but no structures or facilities may be constructed within the 36' corridor (the spa as shown on the MCP received August 9, 2001 would not be permitted at that location). The document will contain language which ensures the view corridor will be maintained in perpetuity.
7. The corridor will be landscaped with low lying vegetation along the pathway and trees to help define the corridor, but do not obscure the pedestrian view along the pathway. A sign will be placed along Estero Boulevard which identifies the path as "Public Beach Access".
8. Landscaping along Estero Boulevard will mimic the design of the landscaped area required for the Pink Shell PUD by meandering into the right-of-way. The buffer will contain no less than 5 trees and 14 shrubs per 100 linear feet. Shrubs located in the landscaped area, between the parking lot and Estero Boulevard will be maintained at a height of no less than 36 inches. Plant materials used will be indigenous native vegetation.
9. The accessory commercial uses, restaurant, deli, and retail services, are to be clearly provided for the guests and staff of the Pink Shell Resort only. Exterior signage advertising these services to the general public is prohibited.
10. Consumption on Premises is limited to in-room self service wet bars, the outside pool deck area, the accessory hotel restaurant and limited food and beverage service. The consumption on premises is for the guests of the Pink Shell Resort and is permitted in

conjunction with accessory hotel uses only. Consumption on premises in conjunction with outdoor seating is allowed between the hours of 11:00 a.m. and 10:00 p.m. Live music entertainment is prohibited in any outdoor area including the pool and outdoor seating, but recorded music is allowed between the hours of 11:00 a.m. and 10:00 p.m.

11. A dune restoration plan must be approved by the Lee County Division of Planning/Environmental Sciences staff prior to local development order approval and will be subject to the following conditions:
  - a. Location of the restoration area will be generally as shown on the MCP.
  - b. Plant species will consist of a mix of sea oats, beach panic grass, railroad vine and beach sunflower in lines planted at 1.5 feet on center
  - c. To allow the plants to become established, the vegetation will be temporarily fenced with ropes and bollards or a similar fencing. Orange construction fence is prohibited.
  - d. No more than one winding pathway will be permitted to provide beach access. The pathway will be delineated with ropes or bollards.
  - e. The beach vegetation project will be coordinated with and integrated with the Town's beach restoration project.
  - f. The dune plan must identify the general location of a storage area behind the dune line for beach furniture and rental equipment (personal watercraft, chairs etc...) as required by the Town's Beach and Dune Ordinance 00-10.

#### Deviations

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 which allows a maximum hotel unit size of 550 square feet to allow units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 SF. In no case will the total area of the 43 units exceed 28,219 SF.

4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking stripes or bumpers) on the parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

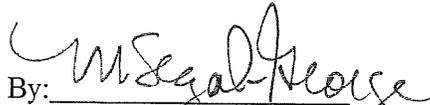
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

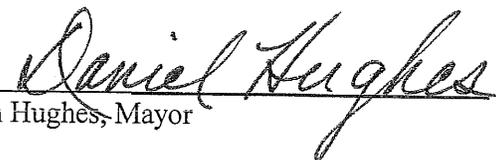
Dan Hughes	aye
Garr Reynolds	aye
Ray Murphy	aye
Terry Cain	aye
Howard Rynearson	nay

APPLICATION DULY GRANTED/DENIED this 27th day of August, 2001.

ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

By:   
Dan Hughes, Mayor

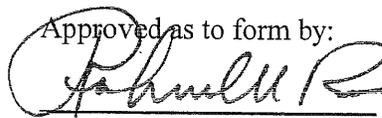
Approved as to form by:  
  
Richard V.S. Roosa, Town Attorney

EXHIBIT D

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 10-05  
GULFSIDE PARCELS

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, with authorization of at least 75 percent of the unit owners of White Sand Villas, a condominium, and at least 75 percent of the unit owners of Captiva Villas, a condominium, as required by Land Development Code (LDC) Section 34-201, (together, "Applicant") has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for White Sand CPD and Captiva Villas CPD to approve a revised master concept plan (MCP) and to make certain changes to existing uses and modifications to existing development; and

WHEREAS, the subject property is located at 190 Estero Boulevard and 200 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340, 24-46-23-W1-04000.00CE, and 24-46-23-W1-04100.00CE, with the legal description set forth in Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Allow for possible relocation of pedestrian beach access on Lot 36, Block D, Island Shores Unit 4 Subdivision, and Lot 37, Block F, Island Shores Club Section Subdivision (required by prior zoning conditions), to the northwesterly side of Lot 38, Block F, Island Shores Club Section Subdivision, as shown on the proposed MCP.
2. ~~Allow for dedication of 5 feet of right of way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.~~
3. ~~Make alterations to the landscaping of the right of way buffer and parking lot and open space areas on gulf side parcels to allow for possible right of way dedication and placement of stormwater management areas.~~
4. ~~Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to "guests of the Pink Shell Resort only."~~
5. ~~Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
6. ~~Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
7. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which time it was continued to December 7, 2009, and then further continued to December 21, 2009, and further continued to January 19, 2010, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council **APPROVES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL of seven (7) conditions**. The Town Council acknowledges that the previously requested deviations have been **WITHDRAWN**.

**A. CONDITIONS**

1. Development must be consistent with the MCP titled "Pink Shell CPD Gulf Side Master Concept Plan" stamped received April 1, 2010, except as specifically modified by conditions or deviations herein. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.
4. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.
5. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.
6. Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for the occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the

businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.

7. Approval of this amendment does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting.

## **B. DEVIATIONS**

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package was withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council **APPROVES deviation #2.**

## **FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, staff, the LPA representative and other interested parties at the hearing, and review of the application, LPA minutes, other documents provided and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
  - a. The Town Comprehensive Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.

5. The proposed use or mix of uses **MEETS** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and  
Comprehensive Plan Policy 4-C-3 regarding commercial locations.

6. As to the schedule of deviations, as conditioned:
- A. Regarding requested Deviation #1, the Town Council acknowledges the withdrawal of this request by the applicant on September 25, 2009.
- B. Regarding Deviation #2, the Town Council acknowledges that Deviation #2 does not affect the subject property.

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

Larry Kiker, Mayor AYE  
Tom Babcock AYE  
Bob Raymond AYE

Herb Acken, Vice Mayor AYE  
Jo List AYE

DULY PASSED AND ADOPTED THIS 19<sup>th</sup> DAY OF JANUARY, 2010, BY THE  
**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By: Larry Kiker  
Larry Kiker, Mayor

ATTEST:  
By: Michelle D. Mayher  
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: Anne Dalton  
Anne Dalton, Esquire, Town Attorney

Resolution 10-05



**BOYLE**

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Town of Fort Myers Beach

F M B DCI 2006<sup>60</sup> 0 0 0 2

JOB # 32547  
FILE # 32547SK02  
SHEET 1 OF 2

JULY 16, 2007

**DESCRIPTION:**

PART OF GULFSHORE SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88 AND PART OF UNIT 4 ISLAND SHORES AS RECORDED IN PLAT BOOK 9, PAGE 37 AND PART OF ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41, ALL RECORDED IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF LOT 10 OF SAID GULFSHORE SUBDIVISION; THENCE S.47°52'35"W. ALONG THE SOUTHEASTERLY LINE OF LOTS 9 AND 10 OF SAID GULFSHORE SUBDIVISION FOR 98.24 FEET; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 37.67 FEET; THENCE N.40°27'57"W. FOR 313.13 FEET; THENCE N.19°21'03"W. FOR 162.23 FEET TO THE NORTHWESTERLY LINE OF LOT 38 OF SAID ISLAND SHORES CLUB SECTION; THENCE N.47°52'35"E. ALONG SAID NORTHWESTERLY LINE FOR 116.87 FEET; THENCE S.42°07'25"E. FOR 19.50 FEET; THENCE N.47°52'35"E. FOR 83.68 FEET TO THE SOUTHWESTERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD; THENCE ALONG SAID RIGHT OF WAY LINE FOR THE FOLLOWING 3 COURSES: (1) S.42°07'25"E. FOR 130.50 FEET; (2) S.47°52'35"W. FOR 5.00 FEET; (3) S.42°07'25"E. FOR 400.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 113.474 SQUARE FEET OR 2.61 ACRES MORE OR LESS

TOGETHER WITH:

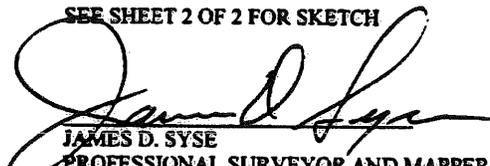
LOTS 5 AND 6 OF GULFSHORE SUBDIVISION AS RECORDED IN BOOK 9, PAGE 88 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID LOT 6; THENCE S.42°07'25"E ALONG THE NORTHEASTERLY LINE OF SAID LOT 6 FOR 75.00 FEET; THENCE S.47°52'35"W. ALONG THE SOUTHEASTERLY LINE OF SAID LOTS 6 AND 5 FOR 100.00 FEET; THENCE N.42°07'25"W. ALONG THE SOUTHWESTERLY LINE OF SAID LOT 5 FOR 75.00 FEET; THENCE N.47°52'35"E. FOR 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7,500 SQUARE FEET OR 0.17 ACRES MORE OR LESS

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

SEE SHEET 2 OF 2 FOR SKETCH

  
JAMES D. SYSE  
PROFESSIONAL SURVEYOR AND MAPPER  
FL. CERT. NO. 4211

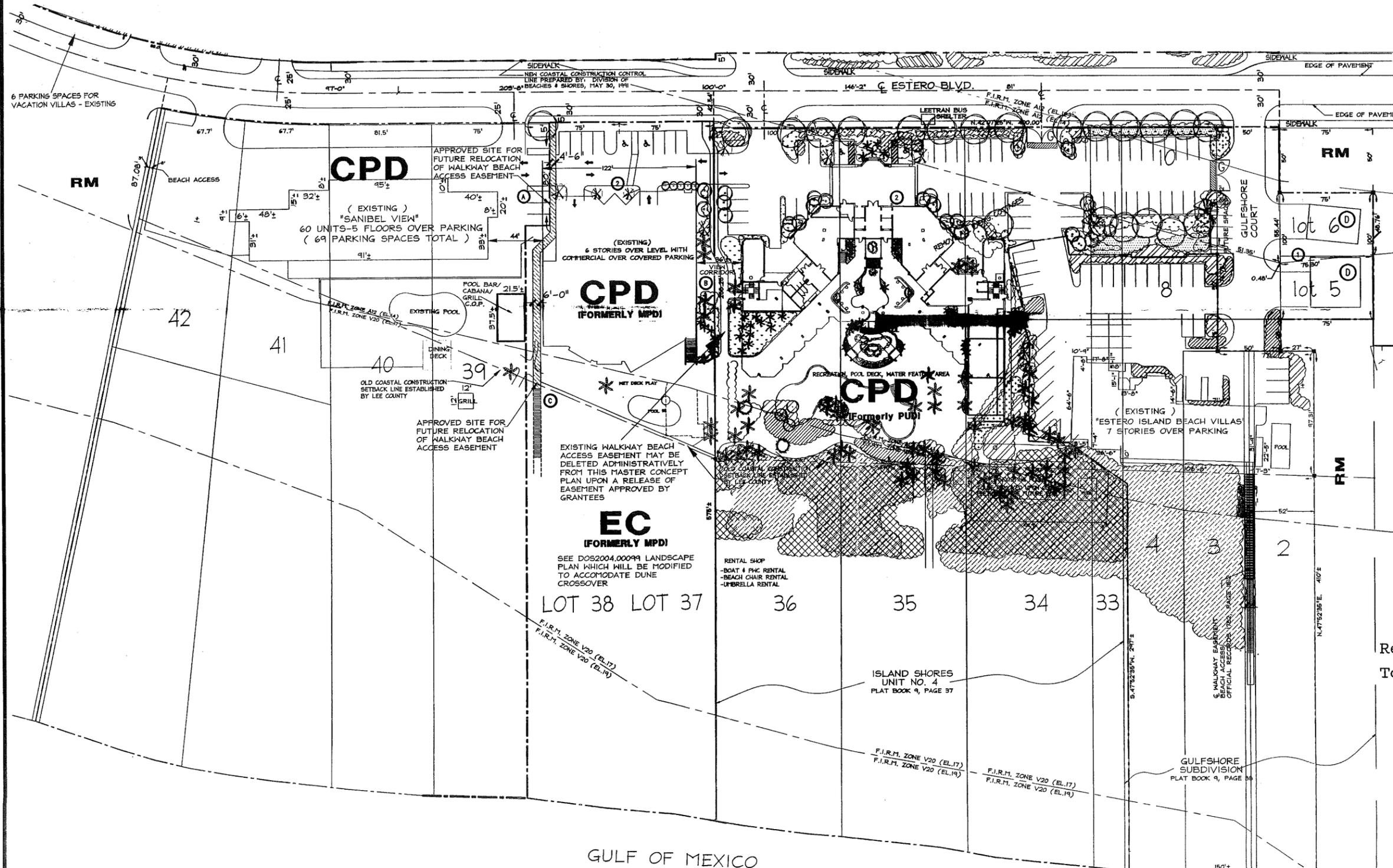
RECEIVED  
AUG 01 2007

BY: .....

EXHIBIT  
7-2 + 7-4  
Gulf Side  
Legal + Sketch  
July 2007



PLOT SCALE



**KEY:**

- FUTURE WALKWAY-BEACH ACCESS EASEMENT
- PROPOSED SECURITY GATES

**LOCATION MAP**  
NO SCALE

**C. P. D. NOTES:**  
ZONING - C P D

1. PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
2. PHASE II AND IV OF PUD PLAN (COMBINED "SANIBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
3. PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS

**2010 REVISIONS TO MCP FOR PINK SHELL GULFSIDE CPD**

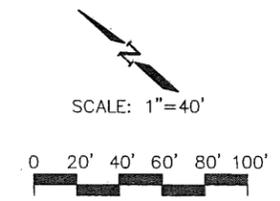
- A. REVISION TO WHITE SANDS CPD AND CAPTIVA VILLAS CPD TO PERMIT RELOCATION OF PEDESTRIAN WALKWAY ACCESS EASEMENT FROM THE VIEW CORRIDOR AS DEPICTED ON THE MASTER CONCEPT PLAN
- B. VIEW CORRIDOR (WITHIN THE THIRTY SIX (36) BUILDING SEPARATION AREA TO BE SHARED BY WHITE SANDS PARCEL AND CAPTIVA VILLAS PARCEL). THE VIEW CORRIDOR SHALL BE A MINIMUM OF TWENTY FEET (20') IN WIDTH WITH LANDSCAPING PURSUANT TO A RECORDED INSTRUMENT WITH THE TOWN OF FORT MYERS BEACH AS THE BENEFICIARY.
- C. AS PART OF THE RELOCATION OF THE WALKWAY BEACH ACCESS EASEMENT THE RELOCATED PEDESTRIAN WALKWAY WILL INCLUDE A DUNE CROSSOVER.
- D. EMPLOYEE HOUSING APPROVAL
- E. SECURITY GATES

**PARKING COUNT**  
EXISTING & PROPOSED

- ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS
- CAPTIVA VILLAS AND WHITE SANDS: 203 SPACES REQUIRED
- EXISTING PARKING:
  - GULFSIDE = 88 SPACES
  - BAYSIDE (VALET) = 126 SPACES
  - SUB TOTAL = 204 SPACES
- PROPOSED ADDED PARKING:
  - LOTS 38 AND 34 = 36 SPACES
- TOTAL = 245 SPACES

REVISED 02/23/10  
REVISED 03/25/10

Received April 1, 2010  
Town of Fort Myers Beach



DATE REVISION: REVISIONS: 02/23/10, 03/25/10. OTHER ASSUMPTIONS ARE INDICATED.

Gora  
McCahey  
ASSOCIATES IN  
ARCHITECTURE

43 Barkley Circle Suite 202  
Fort Myers, Florida 33907  
941-275-0225 Fax 941-275-7123

**PINK SHELL C P D**  
**GULF SIDE**  
**MASTER CONCEPT PLAN**

JOB NO. 98011  
**SP-gs**

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 10-06  
*BAYSIDE PARCELS*

WHEREAS, JABO, LLC, a foreign corporation registered in the State of Florida, ("Applicant") has requested the Town Council amend the Commercial Planned Development (CPD) zoning districts for Bayside CPD to approve a revised master concept plan (MCP) and to make certain changes including the addition of certain accessory uses to the MCP; and

WHEREAS, the subject property is located at 171-191 Estero Boulevard, 251-281 Estero Boulevard, 275 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, Applicant has indicated the property's current STRAP numbers are 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0320, and 24-46-23-W1-00700.0290, with the legal description set forth on Exhibit "A" which is attached hereto and hereby incorporated by reference; and

WHEREAS, the changes requested through this application include the following forms of additional development and modifications to previously approved development on the subject property:

1. Replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot as shown on proposed MCP.
2. Allow existing boat ramp on Bayside parcel to remain, with pedestrian walkway rerouted, as shown on proposed MCP.
3. ~~Allow for dedication of 5 feet of right-of-way on either side of Estero Boulevard without detriment to existing development rights or impact upon existing buffering, open space, and other similar development requirements upon the subject property.~~
4. ~~Remove prior condition restricting use of restaurants, personal services, and other commercial amenities within the resort to "guests of the Pink Shell Resort only."~~
5. ~~Remove prior condition limiting external advertisement of restaurants, personal services, and other commercial amenities.~~
6. ~~Approve deviation to allow resort sign package providing identification and directional signage for the unified Pink Shell Resort. The package provided by the applicant includes signage for establishments not located on the subject property.~~
7. Add a trash compactor to the MCP on Lots 38 and 39, Block D, Island Shores Club Section Subdivision (adjacent to Bowditch Point Regional Park).
8. Add 8 valet parking spaces at the northwesterly end of the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end of the parking lot on the Bayside parcel.
9. Add entrance gates at the parking lot entrances as shown on the MCP. Some entrance gates shown on the MCP are on parcels not included within the subject property.

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 24, 2009, at which time it was continued to April 28, 2009, May 12, 2009, and June 9, 2009, at which point the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, and the testimony of all interested persons and made the recommendations contained in LPA Resolution 2009-13; and

WHEREAS, on September 25, 2009, the applicant filed an amended application withdrawing various requests which were previously considered by the LPA and which resulted in Town staff preparing an amended staff report for consideration by Town Council; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 16, 2009, at which time it was continued to December 7, 2009, December 21, 2009, and January 19, 2010, at which point the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution and testimony of the LPA representative, the request and amended request of Applicant, the documents in the file, and the testimony of all interested persons. The hearing of January 19, 2010 concluded on January 20, 2010.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council **APPROVES** Applicant's amended request to amend the CPD zoning district, subject to **APPROVAL of nine (9) conditions**. The Town Council **APPROVES Deviation #2 with modification**. All approvals and denials are set forth with specificity below.

#### **A. CONDITIONS**

1. Development must be consistent with the MCP titled "Pink Shell CPD Bay Side Master Concept Plan", stamped received April 1, 2010, except as specifically modified by conditions or deviations herein. In addition, the MCP must state that the tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, will be an accessory parking lot for employee parking only. If changes to the MCP are subsequently pursued, appropriate approvals will be required.
2. The terms and conditions of all previous resolutions now affecting the subject property shall continue in force except as expressly altered by this amendment.
3. Vacation, exchange, or relocation of any easement, and/or any dedication of any part of the subject property to the public, and/or vacation of any of the subject property heretofore dedicated to the public, are not affected by approval of this zoning action.
4. Landscaping of the parking lot proposed on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, must comply with LDC Section 10-416 except to the extent permitted through any deviation explicitly approved in this Resolution. The siting of the proposed trash compactor adjacent to the boat ramp, which is shown as plate C-04 of Gora/McGahey job number 98011-10, dated 1/13/10, a copy of which is attached hereto as **Exhibit "B"**, is **APPROVED**.
5. No additional dwelling units, guest units, or timeshare units are authorized by approval of this amendment.

6. No expansion of floor area for any use, whether residential or commercial, is authorized by approval of this amendment.

7. Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. No live-aboard uses are permitted. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.

8. No expansion to the existing "dockmaster" building on the Bayside parcel is approved. Use of this building is limited to accessory administrative offices for the leasing of boats and boat slips and management of water-related activities, a bait-and-tackle shop, and charter and tour boat ticket sales.

9. Approval of this rezoning does not give the developer an undeniable right to local development order approval. Development or redevelopment of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and Land Development Code in effect at the time of development order approval and permitting, except as specifically modified herein.

## **B. DEVIATIONS**

Deviation #1. The request for Deviation #1 from LDC Chapter 30 to allow a resort sign package has been withdrawn by the applicant on September 25, 2009 and is no longer before the Town Council for consideration.

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DCI2006-0001 and DCI2006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "**Exhibit C**". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-of-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.**

## **FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, staff, the LPA representative and other interested parties at the hearing, and review of the application, LPA minutes, other documents

provided and the standards for planned development zoning approval, the Town Council makes the following findings and conclusions:

1. The requested amendment to the Commercial Planned Development (CPD) zoning district, as conditioned **DOES** comply with:
  - a. The Town Comprehensive Plan;
  - b. LDC Chapter 34;
  - c. all other applicable Town ordinances and codes; and
2. The proposed use or mix of uses, as conditioned above, **IS** appropriate at the subject location.
3. Sufficient safeguards to the public interest **ARE** provided by the special conditions to the concept plan or by other applicable regulations.
4. All special conditions **ARE** reasonably related to the impacts on the public's interest created by or expected from the proposed development.
5. The proposed use **MEETS** all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following Policies:

Comprehensive Plan Policy 4-B-4 regarding the Mixed Residential Future Land Use Map category and  
Comprehensive Plan Policy 4-C-3 regarding the commercial locations.

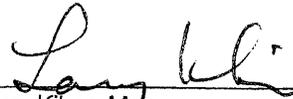
6. As to the schedule of deviations, as conditioned:
  - A. Regarding requested Deviation #1, the Town Council acknowledges the withdrawal of this request by the applicant on September 25, 2009.
  - B. Regarding requested Deviation #2, as modified, Town Council finds that, as modified above:
    1. Deviation #2, **does** enhance the achievement of the objectives of the planned development; and
    2. The general intent of LDC Chapter 34 to protect the public health, safety, and welfare **will** be preserved and promoted by Deviation #2 ; and
    3. Deviation #2, **does operate** to the benefit, **and may not operate** to the detriment, of the public interest; and
    4. Deviation #2, **is** consistent with the Fort Myers Beach Comprehensive Plan.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Acken and seconded by Councilmember Raymond and upon being put to a vote, the result was as follows:\*

Larry Kiker, Mayor aye  
Tom Babcock nay  
Bob Raymond aye

Herb Acken, Vice Mayor aye  
Jo List aye

DULY PASSED AND ADOPTED THIS 20<sup>th</sup> DAY OF JANUARY, 2010, BY THE  
**TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH**

By:   
Larry Kiker, Mayor

ATTEST:  
By:   
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By:   
Anne Dalton, Esquire, Town Attorney

\* A secondary motion was made by Councilmember Raymond and seconded by Mayor Kiker to remove the 8 parking spaces at the northwesterly end o the parking lot on the Bayside parcel, and 12 valet parking spaces at the southwesterly end o the parking lot on the Bayside parcel and to require the replacement of the tennis courts on Lots 38 and 39, Block D, Island Shores Club Section Subdivision, with an accessory parking lot for employee parking only. This motion passed, and is set forth above. The vote was as follows: Councilmember Raymond and List and Mayor Kiker voted affirmatively and Vice Mayor Acken and Councilmember Babcock voted in the negative.

**Resolution 10-06**  
**Exhibit A**

The Northwesterly 1/2 of Lot 28, and Lots 29 through 32, all in Block D, ISLAND SHORES UNIT 4 SUBDIVISION, as recorded in Plat Book 9, Page 37, Public Records of Lee County, Florida.

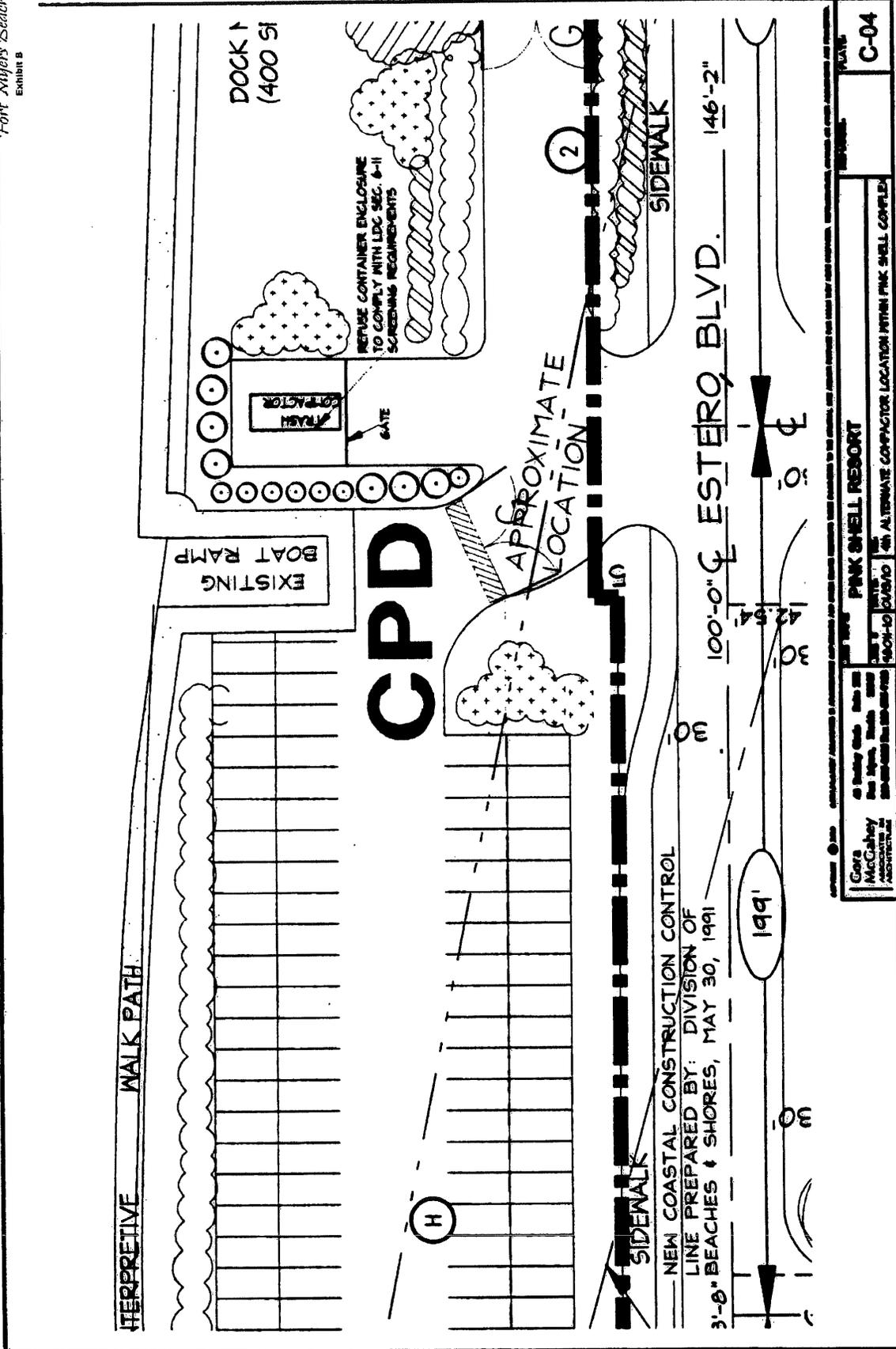
Together with:

Lots 33 through 36, and Lots 38 and 39, all in Block D, ISLAND SHORES CLUB SECTION SUBDIVISION, as recorded in Plat Book 9, Page 41, Public Records of Lee County, Florida.



Option #3

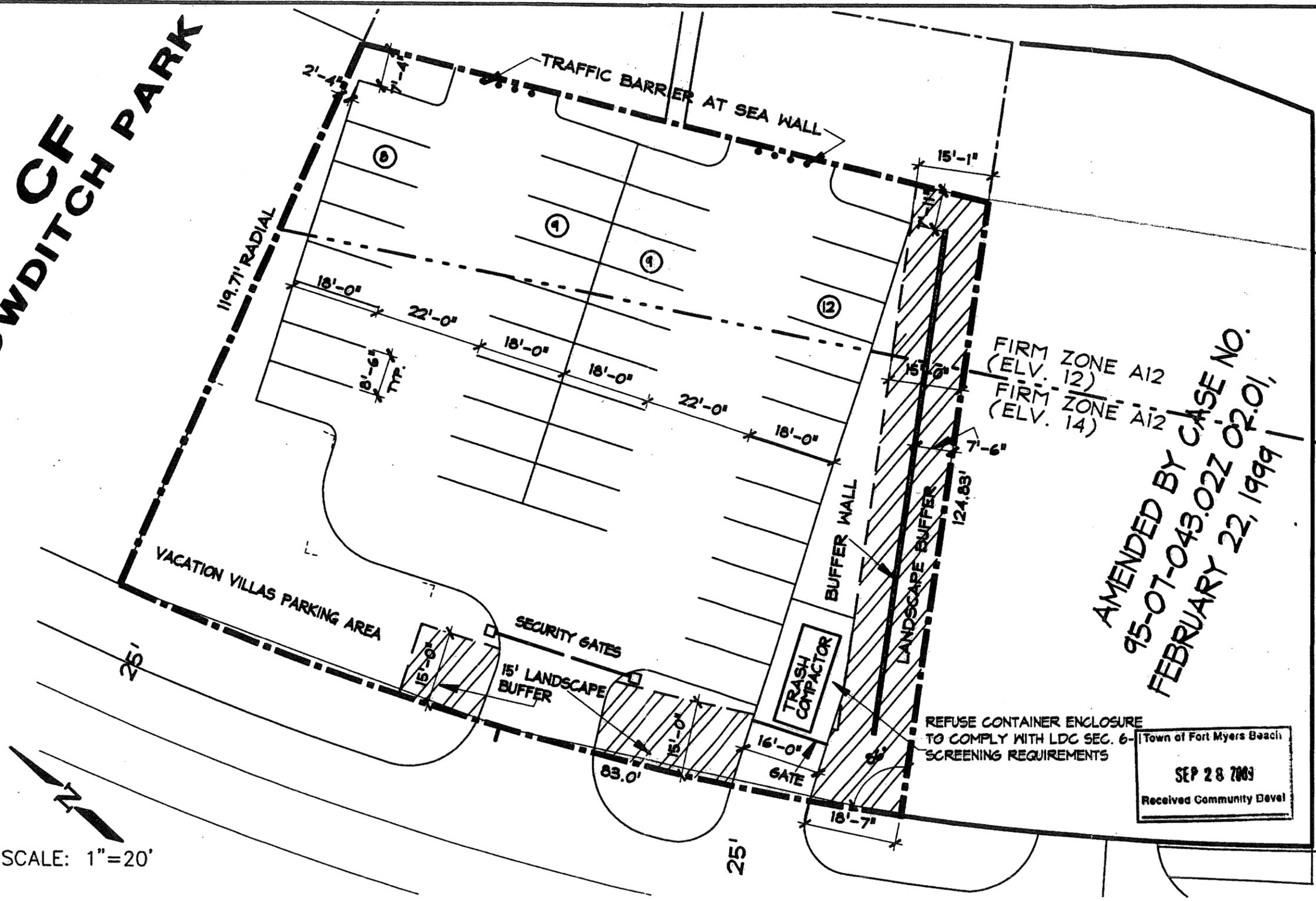
Fort Myers Beach  
Exhibit B



<p>Scale: 1" = 20'</p> <p>North Arrow</p> <p>Legend:</p> <ul style="list-style-type: none"> <li>○ Existing Club, Bath, etc.</li> <li>□ New Club, Bath, etc.</li> <li>--- Proposed Enclosure</li> </ul>	<p>Project Name: <b>PINK SHELL RESORT</b></p> <p>Client: <b>1409-0105/NO</b></p> <p>Alternate Compactor Location Within Pink Shell Complex</p>	<p>PLAN</p> <p><b>C-04</b></p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------

# BOWDITCH PARK

SCALE: 1"=20'



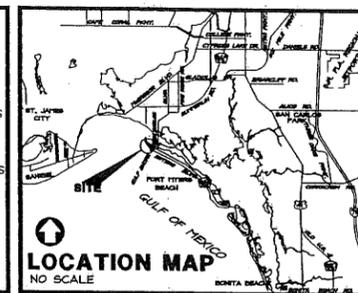
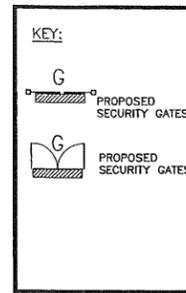
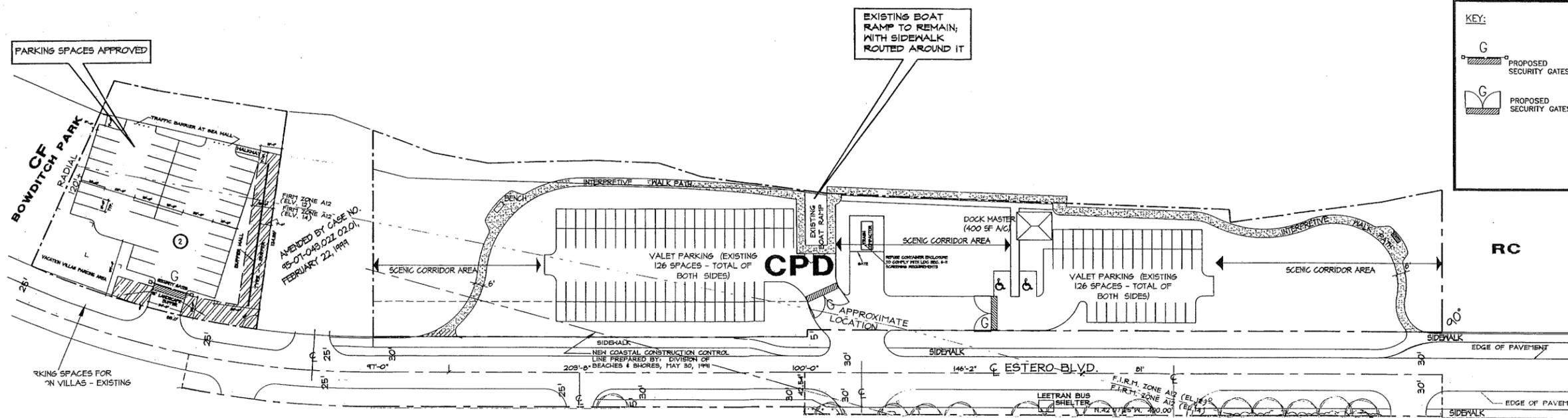
FIRM ZONE A12 (ELV. 12)  
FIRM ZONE A12 (ELV. 14)

AMENDED BY CASE NO. 95-07-043.02Z OF 02.01, FEBRUARY 22, 1999

REFUSE CONTAINER ENCLOSURE TO COMPLY WITH LDC SEC. 6- SCREENING REQUIREMENTS

SEP 28 2003  
Received Community Devel

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<b>Gora McGahey</b> ASSOCIATES IN ARCHITECTURE 48 Boudley Circle Suite 202 Fort Myers, Florida 33907 239-375-8225 Fax 239-373-7128		JOB # DATE 48011-3 01/24/01		PINK SHELL RESORT		PARKING PLAN (GRAVEL/SHELL PARKING AREA TO INCLUDE VALET)	



**C P D NOTES:**  
ZONING - C P D

1. PHASE I "PINK SHELL ISLAND SHORES" - NOT PART OF PINK SHELL RESORT
2. PHASE II AND IV OF PUD PLAN (COMBINED "SANDBEL VIEW" EXISTING SIX (6) STORY, SIXTY (60) UNITS) NOT PART OF THIS APPLICATION
3. PHASE III ONE SEVEN (7) STORY STRUCTURE OVER PARKING WHICH NOW EXISTS AS ESTERO ISLAND BEACH VILLAS WITH 42 UNITS AND JANUARY 10, 2000 AND JUNE 25, 2001 AMENDMENTS TO PUD, ONE NINE (9) STORY STRUCTURE OVER SERVICE LEVEL AND GROUND LEVEL APPROVED WITH RESORT USES AND 92 UNITS

**SCHEDULE OF DEVIATIONS:**

- ① DEVIATION FROM SIGN REQUIREMENTS - WITHDRAWN
- ② DEVIATION FROM LDC10-415 AND 10-416 TO ALLOW BUFFERS AND OPEN SPACE REDUCTIONS AS INDICATED ON LANDSCAPE PLAN PREPARED BY BELLOMO HERBERT & COMPANY, STAMPED "RECEIVED AUGUST 1, 2007" WAS PARTIALLY REDRAWN, AND WAS APPROVED WITH MODIFICATION AS DEPICTED ON THIS MASTER CONCEPT PLAN FOR LOTS 38 AND 39 ISLAND SHORES CLUB SECTION.

2010 REVISIONS TO MCP FOR PINK SHELL BAYSIDE CPD

- A. EXISTING LOCATION OF BOAT RAMP AND WALKWAY
- B. PARKING AREA ON LOTS 38 AND 39 BLOCK D ISLAND SHORES CLUB
- C. SECURITY GATES
- D. TRASH COMPACTOR LOCATION

**PARKING COUNT**  
**EXISTING & PROPOSED**

- ALL PREVIOUS PHASES HAVE INDIVIDUALLY SATISFIED THEIR PARKING REQUIREMENTS
- CAPTIVA VILLAS AND WHITE SANDS: 203 SPACES REQUIRED
- EXISTING PARKING:
 

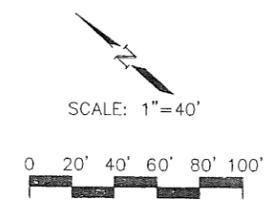
GULFSIDE	= 83 SPACES
BAYSIDE (VALET)	= 126 SPACES
SUB TOTAL	= 209 SPACES
- PROPOSED ADDED PARKING:
 

LOTS 38 AND 34	= 36 SPACES
TOTAL	= 245 SPACES

NOTE: THE PARKING AREA ON LOTS 38 AND 34 ISLAND SHORES CLUB SECTION ARE FOR RESORT EMPLOYEES ONLY.

Received April 1, 2010  
Town of Fort Myers Beach

**REVISED 02/23/10**  
**REVISED 03/23/10**



Gora  
McGahey  
ASSOCIATES IN  
ARCHITECTURE

43 Barkley Circle Suite 202  
Fort Myers, Florida 33907  
941-275-0225 Fax 941-275-7123

**PINK SHELL C P D**  
**BAY SIDE**  
**MASTER CONCEPT PLAN**

JOB NO. 98011  
**SP-bs**

Deviations – 2001 Captiva Villas – Resolution 01-26

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking lots with the following conditions:
  1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
  2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
  3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

B. DEVIATIONS – 2010 Gulfside – Resolution 10-05

## Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The

remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council APPROVES Deviation #2.

B. DEVIATIONS – 2010 Bayside – Resolution 10-06

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.

SCHEDULE OF USES  
(Underling depicts new uses)

**Residential**

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two family (on existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)
- Group Quarters (See condition 6 Resolution 10-05)

Accessory:

- Residential accessory uses

**Lodging**

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare units

Accessory:

- Resort accessory uses, including:
  - Parking
  - Rental of beach furniture and cabanas
  - Boat rental
  - Charter and tour boats
  - Personal watercraft operations office
  - Parasailing operations office
  - Sailing office
  - Docks for use by water taxi or water shuttle (See Condition 7 Resolution 10-06)
  - Meeting space
  - Kids camp and crafts
  - Signs
  - Business center
- Subordinate commercial uses

**Office**

Principal:

NONE

Accessory:

- Administrative Office
- Home occupation (no outside help)
- Commercial accessory uses

**Retail**

Principal:

- Recreational facilities – commercial, in conjunction with a membership\*
- Subordinate commercial uses including restaurant, personal services, retail store (small)

Accessory:

- ATM
- On-premises and package sale for off-premise consumption of alcoholic beverages

**Marine**

Principal:

NONE

Accessory:

- Dock (for lease to non-occupants of the principal use)
- Dock (for use by resort occupants)

**Civic**

Principal:

- Beach or bay access
- Essential services
- Essential service equipment
- Park, neighborhood

*In an effort to be sensitive to the use of paper and due to the size and number of pages associated with the application and subsequent sufficient reviews and resubmittals, all application documents can be viewed digitally either on the Town's website or on the disc provided.*

*Thank you for your understanding,*

*Community Development Staff*